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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 71.

THE DUBUQUE AND SIOUX CITY RAILROAD COMPANY AND THE IOWA HOMESTEAD COMPANY, PLAINTIFFS IN ERROR,

vs.

THE DES MOINES VALLEY RAILROAD COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED OCTOBER 8, 1880.

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a Supreme court of Iowa.

Hon. Austin Adams, chief justice; Hon. W. H. Seevers, Hon. James G. Day, Hon. J. H. Rothrock, Hon. J. M. Beck, justices; E. J. Holmes, clerk.

b THE DUBUQUE & SIOUX CITY RAILroad Company and the Iowa Homestead Co., plaintiff",
vs.
THE DES MOINES VALLEY RAILROAD CO., DEfendant.

Appeal from Humboldt dist. court.

Be it remembered that theretofore, to wit, on the 3d day of October, 1879, there was filed in the office of the clerk of the supreme court of Iowa the abstract of appellant and additional abstract, in words and figures following, to wit:

1 In the supreme court of Iowa, December term, 1879.

THE DUBUQUE & SIOUX CITY R. R. CO. AND the Iowa Homestead Co.
vs.
THE DES MOINES VALLEY R. R. CO., APPELlant.

Appeal from Humboldt district court.

Chas. A. Clark, attorney for plaintiffs; Nourse, Kauffman & Co., attorneys for defendant.

APPELLANT'S ABSTRACT.

On the 19th day of September, 1876, the plaintiff" filed in the district court of Humboldt County, Iowa, the following

Petition.

1. Plaintiff" states that they are corporations, duly organized under the laws of the State of Iowa, for pecuniary profit only.

2. That the defendant is a corporation, duly organized under the laws of the State of Iowa, for the purpose of pecuniary profit only.

3. That by an act approved May 15th, 1856, the Congress of the United States granted to the State of Iowa, for the purpose of aiding in the construction of a railroad from the city of Dubuque to a point on the Missouri River, near Sioux City, every alternate section of land, designated by odd numbers, for six sections in width, on each side of said road; that said act further provided that in case it should appear that the United States had, when the line of said road was definitely fixed, sold any sections, or any part thereof, granted as aforesaid, or the right of pre-emption had attached

to the same, then it should be lawful for any agent or agents, ap-
2 pointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; provided, that the lands to be so located should in no case be further than fifteen miles from the line of said road, and selected for and on account of said road; and, provided further, that any and all lands before that time reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, were reserved from the operations of said act, except so far as it might be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only was granted, subject to the approval of the President of the United States.

4. That by an act of the general assembly, approved July 14, 1856, the State of Iowa accepted said grant, and disposed of, granted, conferred to and upon the Dubuque and Pacific Railroad Company, a body corporate, created and existing under the laws of the State of Iowa, all the lands, interest, rights, powers, and privileges granted and conferred in pursuance of the act of Congress aforesaid.

5. That said Dubuque and Pacific Railroad Company duly accepted said grant, and the provisions of said act of the general assembly, within ninety days after the passage thereof, as required by the provisions of said act, and during the year 1856 proceeded to locate its line of road, and during said year, 1856, selected the lands falling to said road, within the fifteen-mile limit, under the provisions of the act of Congress aforesaid, in accordance with the provisions of said act.

6. That, among other lands so as aforesaid selected, and within fifteen miles of the line of said road, the following lands were duly selected in the year 1856, to wit:

	Sec.	Twp.	R'ng'.	Acres.	In Humboldt Co., Ia., except as noted.
All	1	91	30	673. 64	Humboldt County.
All	3	91	30	665. 32	" "
All	5	91	30	665. 38	" "
N. ½ of NE. and NE. NW	7	91	30	120	" "
All	9	91	30	640	" "
All	11	91	30	640	" "
N. ½, SW. ¼, NW. of SE	13	91	30	520	" "
All	15	91	30	640	" "
NE. of NE	17	91	30	40	" "
N. ½ of NE., N. ½ of NW	23	91	30	160	" "
All	31	92	30	656. 18	" "
All	33	92	30	640	" "
3 E. ½, NW. ¼, N. ½ of SW	1	91	31	576. 19	Pocahontas County.
All	25	92	31	640	" "
NE. ¼ and S. ½	27	92	31	480	" "
All	35	92	31	640	" "
S. ½ of NW. ¼ and SW. ¼	5	91	29	240	Humboldt County.
E. ½, E. ½ NW., NW. of NW., and SW	7	91	29	619. 97	" "
W. ½	17	91	29	320	" "
All	19	91	29	578. 24	" "
W. ½ SW. and W. ½ NW	29	91	29	160	" "

Which said lands, and all of them, were earned by building the second section of twenty miles of said road.

7. That in the year 1857, by foreclosure proceedings in the district court of Dubuque County, Iowa, the plaintiff the Dubuque and Sioux City Railroad Company became the successors to said Dubuque and Pacific Railroad Company, and purchaser and owner of the property, lands, franchises, rights, privileges, and immunities of said D. & P. R. R. Co., which change and succession was recognized by the State and General Government, and accepted by various acts of Congress and acts of the general assembly.

8. That on the 27th day of December, 1858, all of said lands above described were duly certified by the proper officers of the General Government, under said act of Congress of May 15, 1856, to the State of Iowa, as enuring to the Dubuque and Sioux City (late Dubuque and Pacific) Railroad Company under the provisions of said act.

9. That a large portion of said lands were sold and conveyed by deeds of general warranty by the Dubuque and Pacific Railroad Company during its corporate existence, and while the owner of said lands; and as to all the lands so sold and conveyed by said D. & P. R. R. Co., the plaintiff, the Iowa Homestead Co. has become, and now is, the lawful owner thereof by deeds from the various persons who purchased of said D. & P. R. R. Co., which said deeds are duly executed, acknowledged, and recorded.

10. That, as to the balance of said lands, the plaintiff the Dubuque and Sioux City Railroad Company became the lawful owner thereof, under said foreclosure proceedings against said D. & P. R. R. Co., and now remains the owner of such balance of said lands, or has sold and conveyed a portion thereof by deed of general warranty to the plaintiff the Iowa Homestead Company.

11. That at the times of the passage of said act of Congress of May 15, 1856, the location of the line of said Dubuque and Pacific Railroad Company, the selection of said lands under the provisions of said act, and the certification of said lands to the State of Iowa, under said grant as aforesaid, each and every tract and parcel of said lands was within and subject to said grant, and no portion or part thereof had before any of said
4 times been reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever.

12. That, notwithstanding the facts above set forth, the defendant, with full knowledge thereof, claims the lands herein before described under the provisions of an act of Congress passed in 1862, long subsequent to the grant under which plaintiffs became the owners of said lands.

13. That on the 29th day of January, 1874, the defendant, claiming as aforesaid by its officers, agents, and attorneys, procured from the Commissioner of the General Land Office of the United States and the Secretary of the Interior of the United States a wrongful and illegal certification of said lands to the State of Iowa as enuring to defendant under its grant of 1862, and defendant, by its said officers, agents, and attorneys, is now endeavoring to procure from the governor of Iowa and the register of the State land office a certificate, under section 93 of code of 1873, conveying or attempting to convey said lands and all of them to the defendant.

14. That by means of such wrongful act and claims of the defendant plaintiffs' title to said land is disquieted and brought into doubt and dispute.

Wherefore plaintiffs pray judgment that the title of said lands be decreed to be in them and their grantees; that defendant and all persons claiming by, through, or under it be barred, estopped, and forever enjoined from asserting any title or claim to said lands; that said certificate from the Commissioner of the General Land Office and Secretary of the Interior, dated January 29, 1874, be adjudged wrongful, illegal, and void, and cancelled of record as a cloud upon plaintiffs' title; that plaintiffs have such other, further, and different relief as is consistent with equity, together with judgment for their costs.

CHAS. A. CLARK,
Attorney for Plaintiffs.

On the 7th of December, 1876, the defendant, the Des Moines Valley Railroad Company, filed its answer in words and figures following:

Answer.

And now comes the Des Moines Valley Railroad Company, and for answer to the petition of plaintiffs filed herein, says:

1. Defendant admits that the plaintiffs and this defendant are corporations organized under the general incorporation laws of the State of Iowa, as charged in paragraphs Nos. one and two of plaintiffs' petition.

2. Defendant admits that the Congress of the United States passed an act, approved May 15, 1856, making a grant of lands to the State of Iowa to aid in the building of certain railroads therein designated, and that the State of Iowa, by act approved July 14, 1856, accepted of said grant and conferred upon the Dubuque & Pacific Railroad Company certain of the lands, interests, and privileges, conferred by said act of Congress substantially as averred in paragraphs three and four of plaintiffs' petition.

3. Defendants admits that the Dubuque and Pacific Railroad Company accepted of the conditions of said act, and that said company located their said line of railroad within ninety days thereafter and during the year 1856, as charged in paragraph five of said petition.

4. Defendant admits that among the lands selected as within the fifteen miles limits of the line of said railroad were the lands described in paragraph six of said petition, and that the Commissioner of the General Land Office included said lands in a list certified to the State of Iowa, dated December 27, 1858, as lands enuring to the State under and by virtue of the act of Congress approved May 15, 1856; but the defendant avers that said certification was expressly subject to any valid interfering rights, and that said lands were wrongfully included in said lists, and that said lists as to said lands were null and void; that all of said lands claimed in plaintiffs' petition had, prior to the said 15th of May, 1856, been reserved and set apart by competent authority for works of internal improvement, as will hereinafter be more fully stated, and were expressly excepted out of the operation of said act of Congress of May 15, 1856.

5. Defendant expressly denies that any portion of said lands were earned by the building of the second section of twenty miles of said Dubuque and Sioux City Railroad.

6. That as to the matters charged in paragraph No. 7 of said petition, that by foreclosure proceedings in the district court of Dubuque County,

Iowa, the Dubuque and Sioux City Railroad Company became the successors of the Dubuque and Pacific Railroad Company, and became the purchaser and owner of the property, lands, franchises, rights, etc., of said last-named company, defendant has not any knowledge or information thereof sufficient to form a belief.

7. Defendant expressly denies that the proper officers or any officers of the General Government ever certified any of the lands in controversy, or have any authority of law to certify any of the lands in controversy, as enuring to the Dubuque and Pacific Railroad Company, under the provisions of said act of 1856.

8. That as to the alleged conveyances by the Dubuque and Pacific Railroad Company and purchase by the Iowa Homestead Company, as set out and averred in paragraph nine of said petition, this defendant has not any knowledge or information thereof sufficient to form a belief; but defendant expressly denies that said Dubuque and Pacific Railroad Company, or said Iowa Homestead Company, or the grantees of either of said corporations, ever had, or now have, any title whatever to any portion of said lands as charged in paragraphs nine and ten of said bill.

6 9. Defendant expressly denies that each and every of said tracts of land claimed in plaintiffs' petition, or any of them, were subject to said grant of May 15, 1856; or that said lands were not reserved by competent authority for the purpose of aiding objects of internal improvement.

10. Defendant admits that the Register of the General Land Office of the United States, by and with the approval of the Secretary of the Interior, did, under date of January 30, 1874, certify said lands described in said petition to the State of Iowa as lands enuring to the State of Iowa under and by virtue of an act of Congress approved July 12, 1862, entitled "An act confirming a land grant to the State of Iowa, and for other purposes," being the vacant and unappropriated lands in the alternate and odd sections "in place" for five sections in width on each side of the Des Moines River, and that, in pursuance of the several acts of the general assembly of the State of Iowa disposing of said lands, the governor of the State of Iowa has since certified said lands to the Des Moines Valley Railroad Company, which said certificates have duly invested said defendant with the legal and rightful title and ownership of said lands.

And defendant, further answering, says:

11. That at the date of the act of Congress, approved May 15, 1856, making a grant of the land to the State of Iowa to aid in the building of certain railroads therein described, the said lands described in plaintiffs' petition were set apart and reserved by the proper authority of the United States as a part of the lands granted to the State of Iowa by act of Congress approved August 8, 1846, for the improvement of the Des Moines River, and that, being so set apart and reserved, they were expressly excepted out of and from the grant of lands made to the State of Iowa by the act of Congress approved May 15, 1856, for the purpose of building certain railroads therein named.

12. This defendant, further answering, says that pending the passage of said act of Congress of May 15, 1856, to wit, on the 12th day of May, 1856, at the request of Hon. Geo. W. Jones, then United States Senator from the State of Iowa, Thos. A. Hendricks, then Commissioner of the

General Land Office of the United States, laid before the Congress of the United States and the two Houses, through a communication addressed to the said United States Senator, an estimate of the lands undisposed of and unreserved that would pass to the State of Iowa by the said proposed grant. That in said estimate there was deducted out of the number of acres that fell within the limits of the proposed grant all of the lands within five miles on either side of the Des Moines River at the points where said proposed lines of railroad crossed said river.

13. This defendant, further answering, avers that at and prior to the approval of the act of May 15, 1856, the proper authorities of the United States had decided that the lands in controversy, and all other lands
7 within five miles of the Des Moines River, in the alternate and odd-numbered sections, from the Raccoon Fork to the northern line of the State, passed to the State of Iowa under the act of Congress approved August 8, 1846, for the improvement of the Des Moines River, and that said lands had been reserved from entry or sale continuously from the time they were surveyed, and prior thereto, until the grant made by the Congress of the United States, by act approved July 12, 1862, entitled "An act confirming a land claim in the State of Iowa, and for other purposes."

14. This defendant, further answering, states that in pursuance of the act of Congress approved August 8, 1846, the State of Iowa claimed and selected as lands enuring to the State under said grant all the lands within five miles of said river, on either side thereof, from the mouth of the river to the northern line of the State. And on the 23d of February, 1848, Richard W. Young, then Commissioner of the General Land Office of the United States, decided that said grant of August 8, 1846, entitled the State to all lands in the alternate sections within five miles of the Des Moines River, throughout the whole length of that river within the limits of Iowa; that on the 19th of June, 1848, the President of the United States, by proclamation, proclaimed for sale certain lands within the limits aforesaid, above the Raccoon Fork of said river. On the 18th of September, 1848, the secretary of the board of public works of the State of Iowa called the attention of the Commissioner of the General Land Office to said proclamation, and, subsequently, on the 8th day of January, 1849, the Senators and Representatives in Congress from the State of Iowa addressed a communication to the Secretary of the Treasury requesting a revocation of said proclamation. On the 2d day of March, 1849, Robert J. Walker, then Secretary of the Treasury, decided that the act approved August 8, 1846, granted to the State all the lands on both sides of the Des Moines River, from its source to its mouth, and that, in furtherance of said decision, the lands then proclaimed for sale above the Raccoon Fork of said river were withdrawn from sale, and that Richard M. Young, Commissioner of the General Land Office, ordered the local land offices, registers, and receivers of the United States within the State of Iowa to withhold said lands from the market, and set apart and reserve the same as enuring to the State under said act of August 8, 1846. That on the 15th day of February, 1851, the president, secretary, and treasurer of the board of public works of the State of Iowa again notified the Department of its selection of all the odd sections within five miles on either side of the river as enuring to the State of Iowa under said grant of August 8, 1846. That, in pursuance of said decision

of Secretary Walker, the Commissioner of the General Land Office prepared, and the Secretary of the Interior, on the 30th day of October, 1851, certified and approved to the State of Iowa, all the lands then surveyed within five miles of the Des Moines River above the Raccoon Fork thereof.

15. This defendant, further answering, shows that upon the faith
8 of the action of the proper Department of the United States Government in setting aside and reserving from sale the lands within five miles of the Des Moines River, within the State, above the Raccoon Fork thereof, and upon the faith of the conveyances made to the State by the authority of the certificates aforesaid, the State of Iowa contracted to a private corporation, organized under the laws of the State of Iowa, known as the Des Moines Navigation and Railroad Company, for the improvement of said Des Moines River, all of the lands within five miles on either side of the river, within the State of Iowa, remaining unsold at the date of said contract; that said contract was entered into on the 9th day of June, 1854, and the said Des Moines Navigation and Railroad Company entered upon the work of said improvement, and expended large sums of money in the erection of locks and dams on said river under the said contract, and earned, by virtue of the provisions of said contract, all the lands above the Raccoon Fork of said river certified to the State as aforesaid, and held claims against the State for further additional lands then surveyed and certified.

16. This defendant, further answering, shows that by joint resolution of the general assembly of the State of Iowa, approved March 22, 1858, the State of Iowa made a settlement and compromise with the said Des Moines Navigation and Railroad Company, and obtained from said company a release of all its rights under said contract upon the faith of the covenants therein contained and entered into upon the part of the State, that if the consent of Congress could be obtained thereto the State of Iowa would grant all the remaining lands within five miles of the Des Moines River enuring to the State under the said act of August 8, 1846, to the Keokuk, Ft. Des Moines and Minnesota Railroad Company, for the purpose of constructing a railroad up and along the valley of the Des Moines River from the city of Keokuk to the city of Fort Dodge in said State, and that said Des Moines Navigation and Railroad Company consented and agreed to said proposition of settlement, and paid the several sums of money and executed the releases as provided in said joint resolution. That in pursuance of said agreement with the Des Moines Navigation and Railroad Company, the State of Iowa, by act of the general assembly approved March 22, 1858, granted to the Keokuk, Ft. Des Moines and Minnesota Railroad Company all and singular the remaining lands granted to the State under said act of August 8, 1846, upon the condition that the consent of Congress could be obtained thereto. That at the time of the passage of said act all of the lands enuring to the State south or below the Raccoon Fork of said river, together with all the lands that had then been certified, were conveyed to the Des Moines Navigation and Railroad Company, and that the sole and only lands enuring under said grant to the Keokuk, Ft. Des Moines and Minnesota Railroad Company were the lands above the Raccoon Fork of the Des Moines River that had not yet been certified to the State under the act of August 8, 1846.

17. This defendant, further answering, avers that on the day

of , 18 , the name of the body corporate organized under
9 the laws of the State of Iowa, and mentioned and referred to in the act of the general assembly approved March 22, 1858, was changed to the Des Moines Valley Railroad Company, and that the Des Moines Valley Railroad Company succeeded to all and singular the rights of the said Keokuk, Ft. Des Moines and Minnesota Railroad Company to the lands in question and all other property owned or possessed by said corporation.

18. This defendant, further answering, avers that the Congress of the United States, by act approved July 12, 1862, consented to the grant of the lands enuring to said State under said act for the purpose of building a railroad up and along the Des Moines Valley.

19. Defendant avers that the Des Moines Valley Railroad Company has made and completed its road from the city of Keokuk to the city of Ft. Dodge, and has paid and discharged all and singular the debts and claims against the Des Moines River Improvement specified in said act, approved March 22, 1858, and the several amendments thereto.

20. Defendant avers that under and by virtue of the act of Congress approved March 12, 1862, the lands in controversy in this suit enured to the State of Iowa for the use and benefit and in trust for this defendant; that, in pursuance of the authority of said act and the laws of Congress requiring the same, the Commissioner of the General Land Office, by and with the approval of the Secretary of the Interior, and by request of the authorized agent of the State, thereto appointed for that purpose, did, on the certify to the State of Iowa the lands in controversy in this suit as enuring to the State under said act of Congress approved March 12, 1862.

21. This defendant further shows that on the day of May, 1874, the register of the State land office of the State of Iowa certified to this defendant, under the laws of the State of Iowa, the lands in controversy in this suit, and the said lists have been duly approved by the governor of this State, thereby vesting full and complete and perfect title to said lands in this defendant.

Wherefore defendant prays that plaintiffs' petition be dismissed with costs.

C. C. NOURSE & KAUFFMAN,
Att'y' for D. V. R. R. Co., Def't.

On the same day (Dec. 7, 1879) the following stipulation of parties was filed in the court:

Stipulation.

In this cause it is stipulated that defendant's answer shall be filed by the second day of the present December term, and that plaintiffs have sixty days to file a replication; and, further, that the cause be set
10 down for hearing on written testimony, to be taken by deposition or other competent documentary or record evidence; and this cause is continued to the next term of court.

CHAS. A. CLARK,
Attorney for Plaintiffs.
NOURSE & KAUFFMAN,
Attorneys for D. V. R. R. Co.

On the 24th of September, 1878, the plaintiffs filed the following

Replication.

For reply to defendant's answer plaintiffs state:

1. That such reservation of lands as was made under the act of Congress of August 8, 1846, was made up and along the east branch of the Des Moines River, and at no time included the lands in the petition described, which are all more than five miles from said east branch and entirely outside of the reservation of lands set forth in the answer; that at the times of the orders of reservation under which defendant claims title none of said lands were surveyed, none of them were public lands, or subject to any order, grant, proclamation, or reservation. They became public lands in 1853; were not thereafter in any manner reserved under the act of 1846 or otherwise; were subject to the grant of 1856, under which plaintiffs claim title, and passed to plaintiffs under that grant.

2. Plaintiffs deny each and every allegation in the answer inconsistent with paragraph 1st of this reply.

CHAS. A. CLARK,
Attorney for Plaintiffs.

The cause was continued from term to term by stipulation of the parties, and was submitted to the court at the September term of 1878 upon the following evidence:

ABSTRACT OF PLAINTIFFS' EVIDENCE.

A bill making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State.

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of Platte River; from the city of Davenport, via Iowa City and Fort Des Moines, to Council Bluffs; from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line
11 Railroad, near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel, across the said State of Iowa to the Missouri River; from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete des Mortes to the nearest point on said road, to be completed as soon as the main road is completed to that point, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof granted as aforesaid, or the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have

attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections by odd numbers as aforesaid and appropriated as aforesaid) shall be held by the State of Iowa for the use and purpose aforesaid; provided that the land to be so located shall in no case be further than fifteen miles from the lines of said roads, and selected for and on account of each of said roads; provided further, that the lands hereby granted for and on account of said roads severally shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever; and provided further, that any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be, and the same are hereby, reserved from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. And be it further enacted, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles of each side of said road, shall not be sold for less than the double minimum price of the public lands when sold, nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. And be it further enacted, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid, and no other; and the said railroads shall be and remain public highways for the use of the Government of the
12 United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. And be it further enacted, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shal' certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold; and so*l*, from time to time, until said roads are completed, and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5. And be it further enacted, That the United States mails shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may by law direct; provided, that until such price is fixed by law, the Postmaster-General shall have the power to determine the same.

Approved May 15, 1856.

An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15, 1856.

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That the lands, rights, powers, and privileges granted to and conferred upon the State of Iowa by the act of Congress entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15, 1856, be, and the same are hereby, accepted upon the terms, conditions, and restrictions contained in said act of Congress.

SEC. 2. That so much of the lands, interest, rights, powers, and privileges as are, or may be, granted and conferred in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Burlington, on the Mississippi River, to a point on Missouri, near the mouth of Platte River, are hereby disposed of, granted, and conferred upon the Burlington & Missouri River Railroad Company, a body corporate created and existing under the laws of the State of Iowa.

SEC. 3. That so much of the lands, interest, rights, powers, and privileges as are, and may be, granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad via Iowa
13 City and Fort Des Moines to Council Bluffs, are hereby disposed of, granted, and conferred to and upon the Mississippi and Missouri Railroad Company, a body corporate created and existing under the laws of the State of Iowa.

SEC. 4. That so much of the lands, interest, rights, powers, and privileges as are, or may be, granted and conferred in pursuance of the acts of Congress aforesaid, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-line Railroad, near Maquoketa; thence, on said main line, running as near as practicable to the forty-second parallel across the said State to the Missouri River, are hereby disposed of, granted, and conferred to and upon the Iowa Central Air-line Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 5. That so much of the lands, interest, rights, powers, and privileges as are, or may be, granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri River, at or near Sioux City, with a branch from the mouth of the Tete des Morte to the nearest point on said road, to be completed as soon as the main line is completed to that point, are hereby disposed of, granted, and conferred to and upon the Dubuque and Pacific Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 6. The lines and routes of the several roads, above described, shall be definitely fixed and located on or before the first day of April next, after the passage of this act, and maps or plats showing such lines or routes shall be filed in the office of the governor of the State of Iowa, and also in the office of the secretary of state of the State of Iowa.

It shall be the duty of the governor, by affixing his official signature, to file such map in the department having control of the public land in

Washington, such location being considered final only so far as to fix the limit and boundary within which lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid, for the construction of the several lines above indicated, cannot be obtained by said companies within the limits and along any part of the line aforesaid, the governor shall, from time to time, appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid, but the compensation of such agents, costs, expenses, and charges attendant upon and occasioned by making such selections, shall be fixed, regulated, paid and borne by each of said railroad companies respectively, upon and for its own line.

SEC. 7. The Iowa Central Air-line Railroad Company shall furnish, equip, and operate the branch of th'ir railroad that will be constructed under this grant from Lyons City to the point of intersection with the main line of their road, near Maquoketa, in the same manner with their main line from the west, and as completely as though the same
14 was a continuation of said main line, and shall never give any preference to the main line of said road or any part thereof, as defined in their articles of incorporation, by business arrangements, tariff of prices, or otherwise, over the said branch of their railroad.

SEC. 8. The grants aforesaid are made to each of said companies respectively, upon the express condition that in case either of such railroad companies shall fail to have completed and equipped seventy-five miles of its road within three years from the first day of December next, thirty miles in addition each year thereafter, for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, A. D. 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of by the company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 9. The roads aforesaid shall be constructed upon a gauge with a width of four feet eight and one-half inches, and the iron used in the track shall be of approved quality and pattern, and the said road shall be completed and finished in a style and of a quality equal to the average of other first-class western roads, and when the roads, or any of them, authorized to be constructed by this act, shall be intersected by the roads of any other railroad company now constructed, or hereafter to be constructed, it shall be the duty of such road or roads receiving the benefit of this act to furnish all proper and reasonable facilities and to join such other company in making all necessary crossings, turn-outs, sidelings and switches, and other conveniences necessary for the transportation of all freight and passengers over either or any road or roads hereby mutually accommodated, whether said passengers or freight are brought by the roads benefitted by this act, or any other road or roads now constructed, or which may hereafter be constructed, and at such rates as shall not, in any case, exceed the regular tariff of charges on such road or roads.

SEC. 10. All persons who, at the time said grant was made, held valid claims by actual occupation and improvement upon any of the lands embraced in said grant, shall be protected in the same, and entitled to purchase and enter the same upon the terms and conditions hereinafter provided.

SEC. 11. Any person wishing to avail himself of the provisions of this act *and* shall, within three months of the passage thereof, file his application for that purpose with the judge of the county where such lands may be situate, and shall prove to the satisfaction of said judge that his claim is valid, and that the same existed at the time said grant was made; and upon such proof being made such judge shall give to the applicant a certificate of the fact, and such certificate shall entitle the holder, or his bona fide assignee, to enter such land at the rate of two dollars and fifty cents per acre; provided that no person claimant, or the assignee of a claim, shall be entitled to more than one hundred and sixty acres of land under this act; and provided further, that the person asserting a claim, whether as claimant or assignee, shall file his affidavit that he has not, either directly or indirectly, received the benefit of the provisions of this act. Before any right shall be acquired under such certificate, a copy of the same, together with the evidence, shall be served on the secretary of the company interested, and such company shall have the right to appeal from the decision of such judge to the district court, in the same manner as appeals are taken from the decisions of justice of the peace, at any time within ninety days after the service of such papers, and the same shall be tried as other appeal cases, and an appeal may be taken to the Supreme Court by either party, in the same manner as appeals in other cases.

SEC. 12. Such certificate, on being filed with the secretary of the company, upon whose line of road such lands may be situate, when no appeal has been taken, as herein provided, shall entitle the holder or his assignee to the possession of said land until the title shall become vested in the company. Upon payment thereafter to the treasurer of the company for said land, at the price above designated, such person shall receive from the secretary of the company a patent to such land not exceeding in quantity one hundred and sixty acres. Such deed or patent shall vest in the purchaser all the title of said company in and to such lands, except so far as to reserve to the company all such right of way and station grounds as may be actually necessary for the uses of the company.

SEC. 13. The said companies shall each severally assent to and accept the provisions of this act, by a written instrument under the seal of such corporation, with the signatures of the proper officers, within ninety days after the passage of this act, which said acceptance shall be filed in the office of the secretary of state, and be by the secretary recorded in the book kept by him for the recording of articles of association.

SEC. 14. Said railroad companies accepting the provisions of this act shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the general assembly of Iowa, not inconsistent with the provisions of this act and the act of Congress making the grant.

SEC. 15. It shall be the duty of the companies receiving the benefits of this act to make a regular annual report of their proceedings at the usual time and place of electing their officers, exhibiting a detailed statement, as far as practicable, of the amount of their expenditures, liabilities, etc., a copy of which shall be filed in the office of the secretary of state.

SEC. 16. And be it further enacted, That any of said companies accept-

ing the grants of lands under this act, shall take the same with the conditions imposed and incumbrances specified in this act, and shall in no event have any claim or recourse whatever upon the State of Iowa for a misapplication of said grant, incumbrances, or conditions in this act imposed.

SEC. 17. This act shall take effect and be in force from and after its publication in the Iowa Capital Reporter and Iowa City Republican.

(Acts extra session, 1856, p. 1.)

Approved July 14, 1856.

16 An act supplemental to an act entitled "An act to accept the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of land to the State of Iowa in alternate sections, to aid in the construction of railroads in said State,'" approved May 15, 1856, which said act of the legislature of Iowa was approved July 14, 1856.

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That the said companies may make such disposition of the lands granted by the act to which this is a supplement, by mortgage or deed of trust, as may be deemed proper for the purpose of securing any amount of construction bonds necessary for the completion of such roads, which may bear such rate of interest not to exceed ten per cent. per annum, and may sell the same for the best price that can be procured. Said companies, nor either of them, shall ever be allowed to plead that such bonds are usurious or invalid; provided that the moneys realized from the sale of the bonds aforesaid shall be applied exclusively to the construction and equipment of said roads.

SEC. 2. Any mortgage or deed of trust made upon the lands, roads, or the property of either, shall bind and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling stock; and the purchasers under a trustee's sale or foreclosure of mortgage shall have and enjoy all the rights of a purchaser on execution sale; provided further, that nothing contained in this act shall be so construed as in any manner to interfere with, change, or modify the rights of this State or of the United States to any lands granted by Congress to this State and by this State to certain railroad companies therein, as a security for the completion of said roads, or to transfer any right in said lands otherwise than as subject to all the conditions imposed by the grant made by the United States to this State, and by the grant by this State to said companies or by either of said grants; and provided further, that the faith of the State is in no way pledged to the payment of said bonds.

SEC. 3. Any mortgage or trust-deed made as before mentioned, shall be recorded in the office of the recorder of each county through which said road runs or wherein it owns or holds lands, and shall be notice to all the world of the rights of all parties under the same.

SEC. 4. This act to take effect from and after its publication in the Iowa City Republican and Iowa Capital Reporter. Approved January 28, 1857.

I certify that the foregoing act was published in the Iowa City Re-

publican, February 14, 1857, and Iowa Capital Reporter, February 17, 1857.

ELIJAH SELLS,
Sec'y of State.

17 An act to require the Dubuque and Sioux City Railroad Company to release certain swamp, school, and river lands on the line of said road, and providing for the compensation therefor by an extension of the time of building said road.

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That from and after the taking effect of this act the governor of the State of Iowa shall not certify to the Secretary of the Interior that any part of the road is completed on the line of the Dubuque and Sioux City Railroad, as now provided for by section four (4) of the act of Congress making said grant, approved May 15, A. D. 1856, nor shall said road be entitled to receive any certificate for lands on said line of road until said company shall have executed a deed of release of all the swamp and overflowed lands, now approved or that may be hereafter approved by the surveyor-general, in any county within fifteen-mile limits of said road, to the county in which such swamp and overflowed lands may be situated, including all such swamp or overflowed lands as were returned and certified to the General Land Office and ratified to the State by act of Congress of March 3, 1857, nor until said Dubuque and Sioux City Railroad Company shall transfer their interest in those tracts of land in Webster and Hamilton Counties, heretofore sold by John Tolman, school fund commissioner of Webster County, within the fifteen-mile limits of the grant of said road (whether the same are held by patents from the State or contracts made with said commissioner) to the register of the State land office, in trust, to enable said register to carry out and perform said contracts in all cases where he is called upon by the parties in interest to do so before the first day of January, A. D. 1864 (after said day he is authorized and required to reconvey those tracts aforesaid, not demanded or claimed as aforesaid at that time, to said railroad company), nor until the said Dubuque and Sioux City Railroad Company shall execute deeds of release to the State of Iowa of all lands sold by the State prior to the 7th day of May, A. D. 1854, of the odd sections above the Raccoon Fork of the Des Moines River, within five miles of said river, and of such other of said lands as have been sold since that date and prior to the first day of January, A. D. 1862, and now improved and occupied by actual settlers residing thereon, who have purchased the same in good faith, not exceeding, however, one hundred and sixty acres to any one land settler.

SEC. 2. The deeds of release herein provided for shall be executed and acknowledged by said company in the same manner as any other deed for the conveyance of real estate, but it shall not be necessary to describe the separate parcels of said lands; and a general release of each kind of land herein described, viz, as "swamp lands," &c., to the State shall be a valid and legal release of each separate parcel of said lands to the county in which any part thereof may be, and of the Des Moines River lands and school lands aforesaid, to the present claimants of title by sale through the State or said school fund commissioner, as the case may be.

18 SEC. 3. The said deeds of release shall be filed and recorded in the office of the State register of the State land office, and either the record or the certificate of said register shall be sufficient evidence of the compliance of said companies with the provisions of this act.

SEC. 4. In consideration of the foregoing relinquishment by said road the time of completion of any part of said road not now completed shall be extended one year beyond the time of the taking effect of this act; provided That the entire road shall be completed by the time provided for by said act of Congress.

SEC. 5. All acts and parts of acts in any manner conflicting with the provisions of this act are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its publication according to law.

Approved April 7, 1862.

An act to amend an act entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved May 15, 1856.

SECTION 4. And be it further enacted, That the Cedar Rapids and Missouri River Railroad Company, a corporation established under the laws of the State of Iowa, and to which the said State granted a portion of the land mentioned in the title to this act, may modify or change the location of the uncompleted portion of its line, as shown by the map thereof now on file in the General Land Office of the United States, so as to secure a better and more expeditious line to the Missouri River and to a connection with the Iowa branch of the Union Pacific Railroad Company, and for the purpose of facilitating the more immediate construction of a line of railroads across the State of Iowa, to connect with the Iowa branch of the Union Pacific Railroad Company, aforesaid, the said Cedar Rapids and Missouri River Railroad Company is hereby authorized to connect its line by a branch with the line of the Mississippi and Missouri Railroad Company, and the said Cedar Rapids and Missouri River Railroad Company shall be entitled for such modified line to the same lands and to the same amount of land per mile, and for such connecting branch the same amount of land per mile as originally granted to aid in the construction of its main line, subject to the conditions and forfeitures mentioned in the original grant, and for the said purpose right of way through the public lands of the United States is hereby granted to said company.

And it is further provided that whenever said modified main line shall have been established, or such connecting line located, the said Cedar Rapids and Missouri River Railroad Company shall file in the General Land Office of the United States a map definitely showing such modified line and such connecting branch aforesaid; and the Secretary of the Interior shall reserve and cause*d* to be certified and conveyed to said company from time to time, as the

19 work progresses on the main line, out of any public lands now belonging to the United States not sold, reserved, or otherwise disposed of, or to which a pre-emption right or right of homestead settlement has not attached, and on which a bona fide settlement and improvement has not been made under color of title derived from the United States, or the State of Iowa, within fifteen miles of the original main line, an amount of land equal to that originally authorized to be granted to aid in the con-

struction of the said road by the act to which this is an amendment. And if the amount of lands per mile granted, or intended to be granted, by the original act to aid in the construction of said railroad, shall not be found within the limits of the fifteen miles therein prescribed, then such selections may be made along said modified line and connecting branch within twenty miles thereof; provided, however, that such new located or modified line shall pass through or near Boonsboro', in Boone County, and intersect the Boyer River not further south than a point at or near Dennison, in Crawford County; and provided further, that in case the main line shall be so changed or modified as not to reach the Missouri River at or near the forty-second parallel north latitude, it shall be the duty of said company, within a reasonable time after the completion of its road to the Missouri River, to construct a branch road to some point in Monona County, in or at Onawa City; and to aid in the construction of such branch, the same amount of lands per mile are hereby granted as for the main line, and the same shall be reserved and certified in the same manner; said lands to be selected from any of the unappropriated lands, as hereinbefore described, within twenty miles of the said main line and branch; and said company shall file with the Secretary of the Interior a map of the location of the said branch; and provided further, that the lands hereby granted to aid in the construction of the connecting branch aforesaid shall not vest in said company, or be incumbered or disposed of, except in the following manner: When the governor of the State of Iowa shall certify to the Secretary of the Interior that said company has completed, in good running order, a section of twenty consecutive miles of the main line of said road west of Nevada, then the secretary may convey to the said company one-third, and no more, of the lands granted for said connecting branch. And when said company shall complete an additional section of twenty consecutive miles, and furnish the Secretary of the Interior with proof as aforesaid, then the said secretary may convey to the said company another third of the lands granted for said connecting branch; and when said company shall complete an additional section of twenty miles, making in all sixty miles west of Nevada, the secretary upon proof furnished as aforesaid may convey to the said company the remainder of said lands to aid in the construction of said connecting branch; provided, however, that no lands shall be conveyed to said company on account of said connecting branch road until the governor of the State of Iowa shall certify to the Secretary of the Interior that the same shall have been completed as a first-class railroad; and no land shall be conveyed to said company, situate and lying within fifteen miles of the original line of the Mississippi and Missouri Railroad, as laid down on a map on file in the General Land Office; provided further, that it shall be the duty of the Secretary of the Interior, and he is hereby required, to reserve a quantity of land, embraced in the grant described in this section, sufficient, in the opinion of the governor of Iowa, to secure the construction of a branch railroad from the town of Lyons, in the State of Iowa, so as to connect with the main line in or west of the town of Clinton, in said State, until the governor of said State shall certify that said branch railroad is completed according to the requirements of the laws of said State; provided further, that nothing herein contained shall be so construed as to release said com-

pany from its obligation to complete the said main line within the time mentioned in the original grant; provided further, that nothing in this act shall be construed to interfere with or in any manner impair any rights acquired by any railroad company named in the act to which this is an amendment, or the rights of any corporation, person or persons acquired through any such company; nor shall it be construed to impair any vested right of property, but such rights are hereby reserved and confirmed; provided, however, that no lands shall be conveyed to any company or party whatsoever, under the provisions of this act and the act amended by this act, which have been settled upon and improved in good faith by a bona fide inhabitant, under color of title derived from the United States or from the State of Iowa adverse to the grant made by this act or the act to which this act is an amendment. But each of said companies may select an equal quantity of public lands as described in this act within the distance of twenty miles of the line of each of said roads in lieu of lands thus settled upon and improved by bona fide inhabitants in good faith under color of title as aforesaid.

SEC. 6. And be it further enacted, That the Dubuque and Sioux City Railroad Company may so far change their line between Fort Dodge and Sioux City as to secure the best route between those points; said change shall not impair the right to, nor change the location of, their present land grant. A map of the change shall be filed with the commissioner of the General Land Office within one year after the passage of this act.

SEC. 7. And be it further enacted, That all the conditions and limitations contained in the act to which this is an amendment, and not expressly changed by this act, shall attach to and run with the grants made by this act, except as the conditions and limitations have been modified, and may hereafter be modified, by the general assembly of the State of Iowa.

SEC. 8. And be it further enacted, That no land hereby granted shall be certified to either of said companies until the governor of the State of Iowa shall certify to the Secretary of the Interior that the said company has completed ready for the rolling stock, within one year from the first day of July next, a section of not less than twenty miles from the
21 present terminus of the completed portion of said railroad, and in each year thereafter an additional section of twenty miles; but the number of sections per mile originally authorized shall be certified to each company, upon proof as aforesaid of the completion of the additional sections of the road as aforesaid; and upon the failure of either company to complete either section as aforesaid, to be annually built, the portion of the land remaining uncertified shall become subject to the control and disposition of the legislature of the State of Iowa, to aid in the completion of such road.

SEC. 9. And be it further enacted, That all lands hereafter certified to either of the land-grant railroads in said State, and lying opposite any completed section of such road, shall be offered for sale by the company to which they shall be certified within three years from the completion of such section, if then certified; and if not, then within three years from the date of such certificate at reasonable prices; and if not all sold within that period, then during the fourth year all such lands remaining unsold shall be exposed to public sale, after previous notice posted at the county-

seat of the county in which such lands shall be situated, to the highest bidder, and in tracts not exceeding one hundred and sixty acres each.

Approved June 2, 1864.

Also mortgage deed executed by Jesse P. Farley, president, and H. P. Leach, secretary, in behalf of the Dubuque and Pacific Railroad Co. to Abram S. Hewitt, Thomas E. Walker, Frederick Schuchardt, of the city of New York, and Curtis B. Raymond, of the city of Boston, trustees. Mortgage dated March 14, 1857. Recites that it is for the purpose of raising funds from time to time for the construction and completion of the railroad and branches therein described, with its equipment, and is to secure construction bonds in the sum of $12,000,000, being twelve thousand bonds of one thousand dollars each. Describes the mortgaged property as the railroad now owned, or to be hereafter acquired, by the said Dubuque and Pacific Railroad Co., extending from the city of Dubuque, in the State of Iowa, to a point on the Missouri River, at or near Sioux City, in said State, with a branch from Tete des Morte to the nearest point on said road, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever belonging or appertenant to the said railroad, and all the franchises, rights, or privileges belonging to said company,
22 or in any way pertaining or appurtenant to said railroad, now existing or hereafter to be acquired.

Also, all right, title, interest, claim or demand which said party of the first part (the Dubuque and Pacific Railroad Co.) now has or hereafter shall acquire in or to all public lands of the United States granted by act of Congress, approved May 15, 1856, to the State of Iowa, and by the general assembly of the State of Iowa, by act approved July 14, 1856, granted to the said Dubuque and Pacific Railroad Co., party of the first part, subject, however, to the terms and conditions of the said act of Congress, and to the general assembly of the State of Iowa, with all the estate, right, title, and interest, property, possession, claim, or demand whatever, at law or in equity, of the said party of the first part in and to the same and each and every part or parcel thereof, excepting, saving, and reserving to the party of the first part all lands owned or hereafter to be acquired by them, which may not be included in said grant of all public lands from the United States, and may not be necessary for the uses and purposes of said railroad and the depots and right of way thereof.

Conveyance in the mortgage is upon the condition that the party of the second part shall pay, or cause to be paid, the construction bonds described therein. And further provides that the actual possession, management, use, and control of the railroad and branch with appurtenances to them belonging, shall be and remain with the party of the first part without molestation or interference, so long as the construction bonds or obligations shall remain without default or forfeiture.

The mortgage further provides that all the lands granted by act of Congress to the State of Iowa and by the general assembly of the State of Iowa, to the party of the first part, to aid in the construction of the road and branch, shall be under the sole and exclusive management and control of the trustees, who shall have full power and authority to sell and dispose of the same at such price, on such credit or terms of payment and
23 such other conditions as to them shall seem most judicious for the

interest of all parties, and especially to secure the payment in full of all construction bonds issued as therein provided for.

The mortgage further provides that the trustees shall appraise the land and the land shall be and remain at all times open for sale at said appraisement, said prices nevertheless to be subject to revision and alteration.

The mortgage further provides that the bonds issued thereunder shall be received at par in payment for the lands.

Mortgage further provides if any default shall be made in the payment of interest on any of the said bonds for sixty days after demand at place of payment, and the same becomes due, the trustees may, on being requested by the holders of one hundred thousand dollars of the bonds, enter into and take possession of said railroad and branch and all of its appurtenances and all the property conveyed by this deed. And in case said trustees shall take possession of the said railroad they shall have full power to operate the same, and if default shall continue for one year from the time of such demand and refusal the principal sum of such bonds shall become due and payable; the trustees may then sell said road or property, or so much thereof as shall be necessary, at public sale, provided that at least six months' notice of the time and place of such sale shall have been given in at least one newspaper in the city of New York and one in the city of Dubuque. In case of such sale the trustees are empowered to make, execute, and deliver a conveyance of the rights and privileges of the said railroad company in and to the property.

The deed further provides in case a vacancy shall happen in the board of trustees the remaining trustees have power to act and exercise all the powers and discharge all the duties devolving on all the said trustees, and they shall as soon as convenient nominate trustees to fill the vacancy, which nomination shall be submitted to the board of directors of the railroad company, and if approved by them the persons so nominated shall become trustees under the instrument.

24 Plaintiffs also introduced a certified copy of a deed of trust made by the Dubuque & Pacific R. R. Co. the 9th day of June, 1857, to the same trustees, that recites: Whereas the State of Iowa, by act of the general assembly, approved July 4, 1856, accepted of the grant of lands made by act of Congress, approved May 15, 1856, and granted to the Dubuque & Pacific R. R. Co. so much of the lands as were or might be granted in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri River at or near Sioux City, with a branch from the mouth of the Tete des Mortes to the nearest point on said railroad; and whereas by the act of the general assembly the 28th of January, 1857, supplemental to the act of July 14th, 1856, the company was authorized and empowered to make such disposition of the lands granted by the mortgage or deed of trust as might be deemed proper for the purpose of securing construction bonds necessary for the completion of said railroad: Now, in consideration of the premises above recited, and fully to comply with the requisitions of the act of the general assembly of the State of Iowa, and in consideration of the sum of one dollar, the Dubuque & Pacific R. R. Co. granted, bargained, sold, conveyed, and confirmed to the said trustees and their successors the right of way, stations, depot lands, and other lands appurtenant to the railroad, now owned or hereafter to be acquired, together

with all the locomotives, cars, machinery, tools, and implements, etc.; also all right, title, interest, claim, or demand which the Dubuque & Pacific R. R. Co. has, or hereafter shall acquire, in and to all public lands of the United States granted by act of Congress, approved May 15, 1856, to the State of Iowa, and by the general assembly of said State, by act approved July 14, 1856, granted to the Dubuque & Pacific R. R. Co. The railroad company further covenants and represents that it has full and ample power and lawful authority to make, execute, and deliver this deed, and the mortgage heretofore executed on the 14th day of March last, for
25 the purpose of securing said construction bonds. The party of the first part, the railroad company, declare that this deed of trust and said mortgage heretofore executed on the 14th day of March, A. D. 1857, shall both stand together and be considered as part of the same transaction for the purpose of effectually securing the payment of said construction bonds and the interest thereon.

Plaintiffs further introduce transcript of the proceedings in foreclosure against the Dubuque & Pacific R. R. Co. in the district court of Dubuque County.

The case of Morris K. Jesup, Platt Smith, W. W. Hamilton, and Herman Gelpcke, as trustees, vs. The Dubuque & Pacific R. R. Co. Petition filed August 9, 1860.

Also, answer of Herman Gelpcke, president, and James M. McKinlay, secretary; S. Hempstead, J. P. Farley, and C. H. Booth, committee confessing the bill and consenting to a decree.

The decree of the court, entered August 18, 1860, recites that the parties appeared by Platt Smith, solicitor for complainants, and James M. McKinlay, solicitor for the Dubuque and Pacific Railroad Co., and submitted the case to the court upon the bill and answer, and on consideration thereof, and by consent of parties, it is ordered, adjudged, and decreed by the court that the complainant have and recover of the Dubuque and Pacific Railroad Co. $1,722,510 due upon the mortgage, and if they fail to pay the same within ten days their right and equity of redemption in and to the property mortgaged should be forever barred, and the right and title thereto should become absolutely in the complainants. That the complainants in taking and acquiring the absolute right and title to the property, shall take the same, to be by them conveyed in conjunction with the Dubuque and Pacific Railroad Co. to the Dubuque and Sioux City Railroad Co., in accordance with the terms and conditions set forth in the decree, and the Dubuque and Sioux City Railroad Co. shall have and hold the lands
26 which were granted by Congress to the State of Iowa to aid in building said road and branch, and by the State of Iowa to the Dubuque and Pacific Railroad Co., subject to the same rights and obligations and upon the same terms and conditions as the same were held by the Dubuque and Pacific Railroad Co.

It being agreed and understood that the Dubuque & Sioux City R. R. Co. is a new company, formed under articles of incorporation drawn up and adopted for the benefit of all parties concerned in the Dubuque & Pacific R. R. Co., whether stockholders, bondholders, or creditors.

Plaintiffs also introduced a conveyance by the Dubuque & Pacific R. R. Co., and their trustees, to the Dubuque & Sioux City R. R. Co., dated Aug. 21, 1860, signed and acknowledged by Herman Gelpcke, president

of the Dubuque & Sioux City R. R. Co., and James M. McKinlay, secretary, and Herman Gelpcke, Platt Smith, W. W. Hamilton, and Morris K. Jesup, trustees, reciting the mortgage of the 14th day of March, 1857, and the rendition of the decree hereinbefore set out, and in consideration of the premises conveying to the Dubuque & Sioux City R. R. Co. the said railroad, its franchises, appurtenances, and the other properties aforesaid. Also, the said lands granted by Congress, so far as the same remained undisposed of at the time of the foreclosure, to have and to hold the same upon the same terms and conditions, rights and privileges, as they were heretofore held by the Dubuque & Pacific R. R. Co.

Plaintiffs also introduced the following deed of release, executed by Morris K. Jesup and Platt Smith, as surviving and acting trustees under a mortgage deed. This release is dated the 9th day of November, 1870, and recites the mortgage-deed of March 15, 1857, and the decree of the district court of Dubuque County, Iowa. And further recites that the said mortgage-deed has been fully discharged and satisfied, and no longer constitutes a lien upon the property therein described. Now, therefore, for the purpose of fully discharging said mortgage upon the records of the
27 several counties in the State of Iowa wherein the same has been recorded, and in consideration of the premises herein recited, we, Morris K. Jesup, of New York, and Platt Smith, of Dubuque, Iowa, the only acting and surviving trustees under said mortgage and decree, do hereby discharge said mortgage-deed, and acknowledge full satisfiaction thereof as above set forth, and do hereby release, remise, and forever quitclaim to the Dubuque & Sioux City R. R. Co., all the rights, title, and interest conveyed to said trustees by virtue of said mortgage-deed in and to all the property conveyed by said mortgage-deed, including all the lands and real estate mentioned in said mortgage, it being the intention hereof to acknowledge complete satisfaction of said mortgage, and release all the lands and property therein described from the lien of said mortgage, and to enter this release on the records of each county wherein the said mortgage has been recorded.

Also, a duly certified copy of the following list of lands:

Dubuque & Pacific Railroad and Branch; list of lands in the district of lands subject to sale at Fort Dodge, outside of the six and within the fifteen mile limits of the reserve, to satisfy the grant made to the State of Iowa by the act of Congress approved May 15, 1856, entitled "An act making a grant of lands to the State Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the lands selected by the agent of the governor of the State of Iowa from the lands of the United States, in alternate sections and parts of sections, designated by odd numbers, nearest to the line of sections within six sections in width on each side of the railroad, "from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete des Mortes to the nearest point on said road," and in lieu of the land in alternate sections, designated by odd numbers, within said six sections in width which the United States had legally "sold or otherwise appropriated, or to which the rights of pre-emption have attached."

28 *North of base line and west of 5th P. M., Dubuque and Pacific Railroad and branch railroad list, 15 miles limits, office at Fort Dodge.*

	Sec.	Twp.	R'ng.	Acres.
S. ½ NW. ¼	5	91	29	80.
SW. ¼	5	91	29	160.
E. ½	7	91	29	320.
NW. ¼ of NW. ¼	7	91	29	47. 08
SW. ¼	7	91	29	172. 89
E. ½ NW. ¼	7	91	29	80.
W. ½	17	91	29	320.
All of	19	91	29	578. 24
W. ½ NW. ¼	29	91	29	80.
W. ½ SW.	29	91	29	80.
All of	1	91	30	673. 64
All of	3	91	30	665. 32
All of	5	91	30	665. 38
N. ½ and SW. ¼	7	91	30	500. 32
All of	9	91	30	640.
All of	11	91	30	640.
N. ½ and SW. ¼	13	91	30	480.
NW. ¼ of SE ¼	13	91	30	40.
All of	15	91	30	640.
E. ½ SW. ¼	17	91	30	480.
All of	23	91	30	640.
All of	31	92	30	656. 68
All of	33	92	30	640.
All of	1	91	31	656. 19
All of	25	92	31	640.
All of	27	92	31	640.
All of	35	92	31	640.

GENERAL LAND OFFICE, *December* 23, 1858.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to twenty-four, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa, outside of the six and within the fifteen mile limits, under the act of Congress approved May 15, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," the said selections being from the lands of the United States, in alternate sections, designated by odd numbers, most contiguous to the tier of sections within six sections in width on each side of the Dubuque and Pacific Railroad and branch, and being in lieu of the lands in the alternate sections designated by odd numbers
29 within said six sections in width on each side of said road, which the United States had legally sold or to which the right of pre-emption had legally attached prior to the period at which the rights of the State enured under said grant; and they are now submitted for the approval of the Secretary of the Interior in accordance with the requirements of said act of May 15, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, the day and year first herein above written.

[L. S.] THOMAS A. HENDRICKS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
December 27, 1858.

Approved, subject to the conditions and rights above mentioned.
J. THOMPSON, *Secretary.*

GENERAL LAND OFFICE, *March* 4, 1859.

I, Joseph S. Wilson, Acting Commissioner of the General Land Office, do hereby certify that the foregoing list, etc., from page one to twenty-five, inclusive, is a true and correct exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first herein-above written.

[L. S.] JOSEPH S. WILSON,
Act'g Commissioner.

Also a duly certified copy of the following

List, showing the vacant lands in the odd-numbered sections above the Raccoon Fork and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of August 8, 1846, as construed by the Secretary of the Treasury in his letter of March 2, 1849, and of the Secretary of the Interior of October 29, 1851, which have not heretofore been approved.

Tract.	Sec.	Twp.	R'ng.	Q'an.
Lot 1	5	91	27	35.00
Lot 2	5	91	27	41.28
SW. ¼ NE. ¼	5	91	27	40.00
NE. fr. ¼ of NE. ¼	5	91	27	41.74
NW. fr. ¼ of NW. ¼	5	91	27	41.65
30 S. ½ NW. ¼	5	91	27	80.00
S. ½	5	91	27	320.00
Sec.	7	91	27	668.54
W. fr. ½ NW. ¼	31	91	37	97.00
Sec.	5	92	27	691.80
Sec.	7	92	27	658.24
Sec.	9	92	27	640.00
W. ½ NW. ¼	15	92	27	80.00
Sec.	17	92	27	640.00
Sec.	19	92	27	665.92
Sec.	21	92	27	615.65
Sec.	29	92	27	639.84
Sec.	31	92	27	658.68
Sec.	1	91	28	635.52
Sec.	3	91	28	627.42
Sec.	5	91	28	636.08
Lot 1	7	91	28	12.00
Lot 2	7	91	28	20.00
Sec.	9	91	28	640.00
Sec.	11	91	28	640.00
Sec.	13	91	28	640.00
Sec.	15	91	28	640.00
E. ½	17	91	28	320.00
E. ½ NW. ¼	17	91	28	80.00
Lot 1	17	91	28	27.40
Lot 2	17	91	28	39.20
SW. ¼	17	91	28	160.00
Lot 1	19	91	28	37.30
Lot 2	19	91	28	52.05
Lot 3	19	91	28	30.60
Lot 4	19	91	28	68.35
Sec.	21	91	28	640.00
Sec.	23	91	28	640.00
Sec.	25	91	28	640.00
Sec.	27	91	28	640.00
E. ½	29	91	28	320.00
E. ½ NW. ¼	29	91	28	80.00
NE. ¼ SW. ¼	29	91	28	40.00
Lot 1	29	91	28	35.10
Lot 2	29	91	28	43.55
Lot 3	29	91	28	36.00
Lot 4	29	91	28	61.60
31 Lot 1	31	91	28	35.70
Sec.	33	91	28	640.00
Sec.	35	91	28	640.00
Sec.	1	92	28	690.80
NE. fr. ¼ of NE. ¼	3	92	28	52.26
NW. fr. ¼ of NE. ¼	3	92	28	52.26

List, showing the vacant lands in the odd-numbered sections, &c.—Continued.

Tract.	Sec.	Twp.	R'ng.	Q'an.
S. ½ NE. ¼	3	92	28	80. 00
NE. qr. NW. qr	3	92	28	52. 26
NW. qr. NW. qr	3	92	28	52. 26
SE. qr. NW. qr	3	92	28	40. 00
E hf. SE. qr	3	92	28	80. 00
NW. qr. SE. qr	3	92	28	40. 00
Lot 1	3	92	28	33. 30
Lot 2	3	92	28	39. 30
Lot 3	3	92	28	42. 80
N. hf	11	92	28	320. 00
SE. qr	11	92	28	160. 00
Lot 1	11	92	28	65. 80
Lot 2	11	92	28	53. 00
Sec	13	92	28	640. 00
Lot 1	15	92	28	15. 40
Lot 2	15	92	28	3. 30
Sec	23	92	28	640. 00
Sec	25	92	28	640. 00
Lot 1	27	92	28	65. 20
Lot 2	27	92	28	51. 18
Lot 3	27	92	28	36. 00
Lot 4	27	92	28	62. 80
SE. qr. NE. qr	27	92	28	40. 00
SE. qr	27	92	28	160. 00
Lot 1	31	92	28	20. 90
Lot 1	33	92	28	37. 70
Lot 2	33	92	28	36. 27
Lot 3	33	92	28	54. 65
Lot 4	33	92	28	53. 00
S. hf. NE. qr	33	92	28	80. 00
S. hf	33	92	28	320. 00
Sec	35	92	28	640. 00

32 DEPARTMENT OF THE INTERIOR,
December 17, 1853.

The selections embraced in the within list are hereby approved to the State of Iowa, under act of August 8, 1846, without prejudice to the rights, if any there be, of other parties.

R. McCLELLAND, *Secretary.*

ATTORNEY GENERAL'S OFFICE,
29' *May*, 1856.

SIR: Your communication of the 7th ult., referred to me certain questions which have arisen out of a grant of lands made by Congress to the State of Iowa for the improvement of the navigation of the river Des Moines in that State.

It appearing on a cursory examination of the subject that the State and a company to which it had committed the construction of the contemplated works are largely interested in the questions to be resolved, notice of the reference was given, and further examination suspended, in order that arguments might be submitted in behalf either of the State of Iowa or of said company. Those arguments came to hand on the 20th instant, since which day the matter has remained under advisement.

The history of the case exhibits a spectacle of vacillation and contradiction of opinion on the part of the Government which it is humiliating to contemplate, and which constitutes all there is really embarrassing in the points now to be determined.

At the foundation is the act of Congress, the essential part of which is in the following words:

"That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called), in said Ter-

ritory, one equal moiety, in alternate sections, of the public lands (remaining unsold, and not otherwise disposed of, encumbered, or appropriated) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States.

"Section 2. * * * That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvements shall progress; that is, the said Territory or State may sell so much of said land as shall produce the sum of thirty thousand dollars, and then the sales shall cease until the gov-e'nor of said Territory or State shall certify the fact to the President that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell or convey a quantity of the residue of said lands sufficient to replace the amount expended, and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid."

33 "SEC. 3. * * * That the said river Des Moines shall be, and forever remain, a public highway for the use of the Government of the United States, free from any toll or other charge whatever for any property of the United States, or persons in their service, passing through or along the same." * * *

"SEC. 4. * * * That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State, for the purpose contemplated in this act and no other." * * *

This act originated in a bill introduced into the House of Representatives by the Hon. A. C. Dodge, Delegate of the Territory of Iowa, referred to the Committee on Public Lands, and reported and passed substantially in the same words, in so far as regards the grant, as they now stand in the statute-book.

While the bill was pending before the committee, Mr. Dodge obtained from the Commissioner of Public Lands (Mr. Shields) a report of the quantity of land which the grant would embrace, which he stated at 261,000 acres, expressly assuming that the range of land proposed to be granted was limited to the line "from its mouth to the Raccoon Fork." That report accompanied the report of the committee, and was reasoned upon therein, as the basis of the bill which they presented to the House.

Notification of this act was made to the governor of Iowa by the Commissioner of Public Lands soon after its passage, by letter, which assumed that the range of selection was limited as above stated, and transmitted plans in conformity therewith, to guide the State in making selections; the agent proceeded to make the selections within the limits defined, and information to that effect was communicated to the Commissioner by that agent and by the governor.

In all this series of acts there seemed to be ample contemporaneous exposition of the law.

A suggestion of doubt, whether the grant did not extend above the Raccoon Fork, first appears in a letter from the Commissioner (Mr. Young), dated February 23, 1848, which doubt, however, as appears by a letter to him dated January 8, 1849, he had then ceased to entertain. Indeed, by

proclamation of President Polk, under date of June 19, 1848, countersigned by the same Commissioner, the lands on the Des Moines, above the Raccoon Fork, were brought into market, with advertisement as usual, in the State of Iowa, and a considerable quantity of land was entered on sale, or by pre-emption or land warrants, which would have been covered by the grant if it extended above that fork.

In this stage of the case the delegation of the State of Iowa in Congress, on the 8th of January, 1849, addressed a letter to the Secretary of the Treasury, to whose Department the General Land Office then belonged, claiming that the State was entitled along the whole course of the Des Moines to its source, and requesting correspondent action on the
34 part of the Government. To this letter the Secretary replied, under date of March 2, 1849, expressing the opinion that the grant "extends on both sides of the river from its source to its mouth, but not into lands on the river in the State of Missouri;" and on the same day he communicated a copy of the letter as his decision of the question to the Commissioner of Public Lands.

And thus things stood, when immediately afterward the supervision of the public lands passed to the new Secretary of the Interior, Mr. Ewing.

Subsequently, a list of selections, made up in conformity with Mr. Walker's opinion, having been reported by the Commissioner to Mr. Ewing for confirmation by the latter, he refused it upon the conviction expressed by him, that the grant does not extend to lands above Raccoon Fork. He considered, as undoubtedly he might lawfully do, that Mr. Walker's opinion not having been carried into effect, being an unexecuted opinion merely, was open to revision. And he decided to suspend sales of the land embraced in the claim of the State, in order to leave opportunity to Congress to "extend the grant," if it should see fit.

Mr. Ewing's decision is dated April 6, 1850, and an appeal was taken therefrom to the President (Gen'l Taylor). He referred the question to the Attorney-General (Mr. Johnson), who, in his opinion dated July 19, 1850, came to the conclusion that the grant applied to the lands above Raccoon Fork. (Opinions, ed. 1851, p. 2149.)

It does not appear that this opinion was acted on, so as to dispose of the question, for in a paper addressed by the Commissioner of Public Lands (Mr. Butterfield) to the President, dated September 26, 1850, the opinion of Mr. Johnson is reviewed, and objections to its conclusions are submitted; and thus the question remained open at the accession of the next President (Mr. Fillmore).

During that Administration the first material step in the business consists of a reference of the case to the Attorney-General (Mr. Crittenden), followed by an opinion of the latter, dated December 2, 1850, to the effect that the questions involved were not of a nature to call for or justify the present interposition of the President of the United States, they being appropriate only to the jurisdiction of the Secretary of the Interior. (Opinions, Farnham's ed., vol. 5, p. 275.)

It would appear from this conclusion that Mr. Crittenden did not become aware that the matter was regularly before the President on appeal from the decision of the Secretary of the Interior.

Thus, the papers went back to the Interior Department; and the Secretary (Mr. Stuart) referred the subject to the Attorney-General (Mr. Crit-

tenden), requesting his official opinion on these points, namely: 1. The effect of Mr. Walker's letter; 2. That of Mr. Johnson's opinion; and 3. The true construction of the disputed grant.

Mr. Crittenden, by letter of June 30, 1851, replied that, in his opinion, the letter of Mr. Walker was not an act done, but an opinion expressed, and, therefore, had no binding effect on his successors; that the opinion of Attorney-General Johnson was but advisory, having no compulsory effect on the Secretary to whom it was addressed; and that the grant, in his judgment, was limited to the lands below the Raccoon Fork. (Opinions, Farnham's ed., vol. , p. 390.)

On the 26th of the same July, Mr. Stuart communicated Mr. Crittenden's opinion to the Commissioner, with expression of concurrence in its conclusions, but permitting Mr. Ewing's order to withhold the lands from market to continue in force "until the end of the approaching session of Congress."

But, on the 29th of October, he again addressed the Commissioner on the subject, and directed the selections of the State above Raccoon Fork to be reported for his approval, assigning the following reasons:

"I have considered and carefully reviewed my decision of the 26th of July last, and in doing so, find that no decision which I can make will be final, as the question involved partakes more of a judicial than of an executive character, which must ultimately be determined by the judicial tribunals of the country; and although my own opinion as to the true construction of the grant is unchanged, yet in view of the great conflict of opinion among the executive officers of the Government, and also in view of the opinions of several eminent jurists which have been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State, and to approve the selections without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary."

It would appear from this that Mr. Stuart was overruled, for he expressly says that his own opinion of the law remains unchanged, and the reasons which he gives for acting against the law as he understands it, and as expounded by the Attorney-General, Crittenden, are not satisfactory, and would equally well apply to any other controverted subject before the Department.

However this may be here was a decision, and in conformity with it three lists were made out at the Land Office, namely:

List No. 1, "showing the tracts falling within the limits of the Des Moines grant above the Raccoon Forks of the Des Moines River, so far as the surveys have extended, under the decision of the Secretary of the Treasury of 2d March, 1849, that such grant extended to the north boundary of the State."

List No. 2, showing tracts disposed of, within those limits, in the interval between the date of one of the previous orders limiting the grant, and one of those extending it above the forks.

List No. 3, showing the vacant tracts subject to the claim of the State.

To the latter Mr. Stuart appended the following order:

"DEPARTMENT OF THE INTERIOR,
"*October* 30, 1851.

"The selections embraced in the within list, No. 3, are hereby approved in accordance with the views expressed in my letter of the 29th inst. to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the
36 land officers by the agents of the State. It being expressly understood that this approval conveyes to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt by the local land officers of the letter of the Commissioner of the General Land Office, communicating the decision of Mr. Secretary Walker to the effect that the grant extended above the Raccoon Fork.

"ALEX'R H. H. STUART, *Secretary*."

Continuing to act on the same premises of judgment, the Land Office, it seems, reported another list to you in the following terms:

"A list showing the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the 2d of March, 1849, and of the Secretary of the Interior of the 29th October, 1851, which have not heretofore been approved."

Which list you approved in these words:

"DEPARTMENT OF THE INTERIOR,
"*December* 17, 1853.

"The sections embraced in the within list are hereby approved to the State of Iowa under act of 8th August, 1846, without prejudice to the rights, if any there be, of other parties.

"R. McCLELLAND, *Secretary*."

It is true, as stated in your communication to me, your attention was not called to the general question involved, but still the act was done.

To the administrative history of the case as thus presented, certain collateral facts are now to be added in order to the full understanding of all its relations.

Of lands included within the grant, the amount selected and approved is 321,000 acres below the fork.

Proceeding above it, we at length come to two confluents of the Des Moines. One of them in a map before me is denominated the "East Fork" of the Des Moines. This stream flows out of a lake situated on the line which divides the Territory of Minnesota from the State of Iowa, and the stream itself is wholly within the State. The other confluent has its origin far up in the Territory of Minnesota, at a distance of, say, eighty-five miles north of the dividing line, and this also on the same map bears the name of "Des Moines."

In a map before me, published in 1844, and founded on Nicollets', the main river is called "Keosauqua or Des Moines" only to a point just above the Raccoon Fork, beyond which it is called the river of the Sioux's. This fact may serve to explain the phraseology of the act, and to justify the original construction placed on the grant by the Government.

Of lands embraced in the claim of the State and within its limits, the

quantity above the Raccoon Fork is 560,000 acres, of which 260,347 acres have already been passed over to the State by Mr. Stuart and by
37 yourself, leaving less than 300,000 acres now in controversy between the United States and the State within the limits of the State.

Add to this an estimated quantity of 272,000 acres on the west branch of the Des Moines, north of the line of Iowa and in Minnesota.

The Des Moines, it may be further added, according to a statement before me made up at the Land Office, can scarcely be considered as a navigable river in the upper part of its course, above the Raccoon Fork.

On these facts you present the following questions, namely:

1. Whether the decision of Mr. Stuart, and the consequent action of the Department down to the present time, are conclusive in favor of the claim of the State of Iowa.

2. Whether, if it be an open question, the grant extends, in my opinion, above the Raccoon Fork.

3. Whether it is to be considered as reaching into the Territory of Minnesota.

I proceed to state such views as occur to me on the whole subject, to be applied afterwards to the particular questions which you propound.

I suppose it must be conceded that an opinion of the Attorney-General is not conclusive, that is, it is not compulsory on the President, or even on a head of Department.

It is inconvenient, however, to have conflict of opinion between the Attorney-General and a head of Department; and that inconvenience is placed in the strongest light by the facts of this case where the affirmative opinion of an Attorney-General went disregarded by one Secretary, and a negative opinion of another Attorney-General by the succeeding Secretary. There could be no more flagrant example of confusion of opiuion and action.

A Secretary, undoubtedly, is entitled to have and to act upon his conscientious opinion of a question, even after he has taken the opinion of the Attorney-General; but the interest of parties and the credit of the Government require decision; and it would seem that any such conflict of opinion between the Secretary asking and the Attorney-General giving official advice should be referred at once to their common superior, the President, in order that the particular question of administration itself may receive the authoritative decision of the executive department. That did not happen in this case in either of its stages; and thus all the embarrassment of contradictory opinions and acts, with the uncertainty of present duty which they create, are transmitted to you for determination.

Is it necessary, now, for me to weigh the reasons of Mr. Crittenden against the reasons assigned by Mr. Johnson, and conclude which of them shall be overruled by me? That would be an unwelcome task.

It must be admitted, on the mass of arguments before me, that there are two sides to the question of the true legal intendment of the act of Congress. At the same time it is due to frankness to say that, if
38 constrained to judge between them, the inclinations of my mind would be to the side accepted by Mr. Crittenden, because the language of the statute admits of such construction and because, on the retrospect of the history of the case, it is impossible for me to doubt as to the actual intentions of Congress. That is, if the question were one of new

impression, the tendency of my judgment would be to say that the grant is limited to the line of the improvement, namely, the river Des Moines below the Raccoon Fork.

But it is not a question of new impression. Nay, it has passed beyond opinion into action, and at this point of time it is more material to consider what has been done than what has been thought on the subject-matter. I wish, if possible, to find something firm to stand upon in what has been done.

In so far as regards selection already approved whether by yourself or by Mr. Stuart, it is clear that the Government cannot undo that. What Mr. Stuart did in this respect with deliberation, what you did without the questions involved being suggested to you, was in each case done by the competent legal authority, and binds the Government. One Secretary has no more lawful power to undo a thing lawfully done by his predecessor in a matter of grant than in a matter of account; no more right where a settlement is in favor of a third party than where it is in favor of the United States. When a thing is decidedand done by the head of a Department, acting within the scope of his lawful authority, it can be revised by his successor only on the ground of mistake in a matter of fact, or the discovery and production of material new testimony. (Mr. Crittenden's opinion of December 28, 1852, MS. See also Bank of Metropolis vs. The United States, XV Peters, p. 400; Ex-parte Randolph, II Brocken, p. 470.)

If the acts of Mr. Stuart and of yourself in this respect had undertaken (as they do not) to dispose of any contending rights of third parties, the latter would have had their remedy at law. But what you have done is final as respects the United States.

But have you erred in continuing to follow the line of action which your predecessor had prescribed, and which the Commissioner of Public Lands assumed as settled in presenting to you for approval lists made out on the premises of the subsisting decision of Mr. Stuart? And if you erred inadvertently in thus approving selections made by the State above Raccoon Fork, shall you now stop and change the rule of action, which Mr. Stuart had prescribed to the Commissioner? The answer to these questions is not included in the preceding conclusion. It is one thing to undo an act done, and quite another to cease to persevere in a previous line of action as to acts of a continuous nature.

It might with much plausibility be argued that, while Mr. Walker's order was an opinion merely and did not bind Mr. Ewing, so what Mr. Stuart did, though final as to the lands actually approved, was but a precedent, when a new list comes up, and may be rejected by you as a precedent, though it cannot be reversed or annulled as an act; that the
39 disposition of the particular lands made by him is irrevocable, but the principle on which he did it is open to re-examination as respects any other lands in the same right claimed by the State; and that, in executing the same law, you are to execute it according to your own understanding of its force and effect.

That may be so, and yet the contingency is not exactly of the application of a precedent to a new case. For the grant to Iowa is one thing, although it be composed of parts or of new sets of parcels appertaining to the general whole. Mr. Stuart decided to adopt the opinion of Mr. Walker, which carried the grant above the Raccoon Fork, and he proceeded to

execute, and did execute, that decision in part; and the true question is of the completion of execution by you of what had been partially executed by Mr. Stuart.

I think it must be a clear case of manifest illegality in the work commenced and half executed by one Secretary to justify the abandonment of it by his successor. Is the present such a case of palpable violation of law? That cannot be pretended in face of the opinions of Mr. Walker and Mr. Johnson, and the administrative acquiescence in these opinions on the part of Mr. Stuart. In my judgment it is not for the good of the public service, while it is prejudicial, and sometimes grossly unjust, to private interests concerned, for the executive to break off things half done, because of mere doubts of the legality of the decision upon which commencement was made, or even the belief that, upon better reflection at the outset, a different decision would have been rendered. To indulge in such oscillation of action under the influence of ordinary causes of perturbation is not seemly on the part of the Government.

In the present case, of land above the Raccoon Fork claimable by the State within its limits, twenty-six fifty-sixth parts, nearly half, the United States have already recognized as belonging to the State. I think you may if you choose, well consider that a determination of the question, proper to be acquiesced in by you as a settled fact of administration.

But this conclusion is placed by me on the ground only of a decision by Mr. Stuart, proper to be accepted by his successor as constituting final action of the Government.

It has been suggested in argument that interferances in favor of the present claim of the State, may be deduced from a clause in the recent act makin grant of lands to the State of Iowa, to aid in the construction of certain railroads in that State (May 15, 1856). The words are:

"That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner, by competent authority, for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of railroads through such reserved lands, in which case the right of way only shall be granted subject to the approval of the President of the United States."

40 This provision is rather doubtfully worded. I suppose it intends to enact that the alternate sections reserved to the United States for the sake of augmented sale-value, in the case any previous grants to the State for State objects shall continue to be so reserved now, and shall not be taken as part of the lands subject to present grant to the state; and if the title still remains in the United States, the right of way is to be passed upon by the President of the United States.

Such an act of the President would apply still more distinctly to any case of actual continuing reservation to the United States for the uses of the United States.

Conceding, at any rate, that the general object is to protect the rights of the United States in any such case, if it exists, it is urged that such a provision would have been superfluous had not the Des Moines grant extended above the Raccoon Fork.

Well, suppose a construction which makes it superfluous; what then?

There are very many superfluous provisions in the statutes. Of course, no very cogent argument can be derived from that consideration.

Moreover, if it were expressly said in the provision that the Des Moines grant was intended, still it would only operate as enactment ex majori cautela, to guard against interferences, in case the present controversy should be determined in favor of the State.

But the argument errs in supposing that no other grants of land have been made to the State of Iowa for the purpose of aiding in objects of internal improvements, or for any other purpose whatever. Various other grants of land have, from time to time, been made to the State. (See exempli gratia, V Stat. at Large, pp. 453–455; ibid, pp. 789–790; VI Stat. at Large, p. 810.)

In a word, Congress by this provision said: "We have already made several grants of land to Iowa for one purpose or another, which may or may not have been located, and we do not design, by this act, to undertake to do what indeed we could not do if we would, that is, divert those grants from their lawful destination for the use of railroads, on account of which the present new grants are made to the State."

On the whole, therefore, it seems to me that this provision does not serve in any way to change the premises of the question or the conclusions founded on those premises.

Remains the question, on which of the two upper confluents of the Des Moines, the eastern or western, the land is to be taken. I conceive that point to be absolutely determined by the premises of my conclusions.

Mr. Walker's decision, as we have seen, was that the grant extends "on both sides of the river from its source to its mouth, but not into lands on the river in the State of Missouri."

Now, the language of the act is explicit, granting to Iowa the alternate sections "in a strip of five miles in width on each side of said river" Des Moines; and the improvement is in the equally explicit terms of
41 the act, "from its mouth to the Raccoon Fork." But while carrying the grant above the Raccoon Fork to the "sources" of the Des Moines, where the improvement does not reach, he lops it off below, along the line of the improvement, by excluding "lands on the river in the State of Missouri." The explanation of which is, that for the last twenty-five miles of its course the river Des Moines is the dividing line between the States of Missouri and Iowa. Missouri enjoys directly all the benefits of the improvements of the navigation of the river, but no land in Missouri is to be comprehended in the grant, notwithstanding its terms are of lands on each side of the river, for the obvious and sufficient reason that the act contains no provisions adequate to enable Iowa to take, hold, and manage lands in the State of Missouri.

I conceive that the considerations which induced Mr. Walker to diminish, by construction, the scope of selections for twenty-five miles on one side of the river below the Raccoon Fork, show that in extending the grant above to the "source" of the Des Moines, he intended to confirm it within the limits of the State of Iowa.

Such was the understanding of the subject which guided the action of Mr. Stuart, the lists which he approved expressly referring to the limit of the north boundary of the State. And that is the utmost point to

which, in my judgment, you can lawfully go in case you acquiesce in, and accept as rule for yourself, the opinion of Mr. Walker and the action of Mr. Stuart.

They unquestionably had before them the maps of the State, in which the eastern branch of the Des Moines was alone depicted, taking its rise in a lake on the boundary-line of Minnesota. If they had knowledge of any western branch of greater or less length, they treated the eastern branch as the true Des Moines.

I think they must have done so because they could not have done otherwise. Mr. Walker did not say and could not have said that the grant extends into Minnesota. If he had apprehended any such consequences of deciding that the grant extends above the Raccoon Fork, he could not have made this decision, but must have referred the State, as Mr. Ewing afterward did, to Congress. That is plainly to be inferred from the consideration that the act of Congress cannot be executed, if it be so construed as to assume that the grant extends into Minnesota. It contains no provisions in virtue of which one State is to hold public domain within the limits of another State or inchoate State.

Impressed by the force of this consideration, Mr. Walker excluded from the purview of the grant the land on one side of the river for the length of twenty-five miles, though plainly comprehended by the letter of the act.

Of course, it avails nothing to say that when the grant was made the part of Minnesota affected was included in the limits of the State of Iowa, and that therefore the letter of the law extends the grant beyond the northern line of the State. So also the letter of the law comprehends lands in Missouri. But the letter of the law in the former case, as well as in the latter, must yield to the legal objection that apt language
42 of enactment to that express effect, *it* cannot be inferred from other words of enactment that a grant of land to one State extends into another State, (including in each phrase inchoate States).

Moreover, we are not dealing with the import of the grant on its face or as construed while Iowa was a Territory and included a part of the present Minnesota.

If we go back to that day, we find the grant construed, and accepted on both sides, as not extending above the Raccoon Fork, and, of course, not involving any possible question of the upper course of the Des Moines. If we now stood there, at that point of time, my decision in the case would be precisely the reverse of what it now is in effect, though precisely the same in form and tenor; that is, to accept as final the previous action of the Executive (including President Polk's proclamation) which limited the grant to the Raccoon Fork. I should be the more fortified in such a conclusion, because the maxim stare decisis would then have applied to the case without qualification or doubt; and also because, if the naked question of the construction of the statute were before me, as it would then have been, my judgment would have been satisfied with the construction put upon it in that early stage of the case by the United States, and not objected to by the State.

While, at that time, the idea of acquiescing in the thing decided would have confined the grant to the Des Moines below the Raccoon Fork, the same idea now requires that the grant, though carried by your predecessor

above the Raccoon Fork, should yet be confined within the limits of the State of Iowa. That is the decision whose authority is invoked as controlling you, and which, if you accept at all, you accept on the final decision of the whole matter. If you throw up the decision of Mr. Stuart, founded on Mr. Walker's opinion, if you come to the conclusion that that is not to be acquiesced in as final administrative action, if you go behind it, then you come at once, per saltum, to the state of the question as it stood anterior to the 2d of March, 1849. At that point we shall have all the arguments of Mr. Attorney-General Johnson in favor of the finality of Executive action to counsel acquiescence in the then existing practical construction of the law. If, passing over this consideration, we proceed to reason about the meaning of the law, we do not have the advantage of the elaborate arguments on that point which have since been officially presented by Mr. Johnson, and also by Mr. Attorney-General Crittenden; but all those arguments would possibly occur to us; and we might be the more easily brought to the same conclusion with the latter by fresher cotemporaneous knowledge of the legislative history of the act of Congress.

In fine, after the most mature reflection, it seems to me that only two tenable alternatives present themselves in the case: one, to stand on the action of Mr. Walker and Mr. Stuart, not as legal doctrine, but as decision; and the other, rejecting all the intermediate vacillations of opinion, to go back to the original action, and stand on that as decision, not as legal doctrine. Either of these conclusions would be perfectly advisable according to the rules of law, for if it be unlawful to go behind
43 Executive decisions, then the last decision in the case was a violation of law and should be rejected because of its illegality. I have hesitated much on the question whether that be not the true view of the subject; but, for reasons already suggested, have come to the conclusion, on the whole, to advise you to stand on the last decision, which gives to the State the lands along the course of the Des Moines up to the northern boundary of the State.

There is a collateral consideration which has weight with me. It is discreditable to the Government that its views of a law and its consequent action should be shifting about like a weather-vane, as they have done in this case. I wish, if it be possible, to stop that. I think the alternative lines of duty, either of which you may lawfully pursue, and beyond which there is no other apparently lawful course, indicate the means of producing the desirable result of now concluding the subject in so far as regards the Executive.

I advise, therefore, that you propose to the State of Iowa and its assigns to acquiesce in and accept the decision of Mr. Stuart as final, and to approve selections accordingly, provided the State, or its assigns, will themselves agree to acquiesce in and accept that decision as final. If they refuse to treat that decision as final, they cannot expect you to do so. They should be bound, if you are. If the' consent to enter into satisfactory stipulations of contract to that effect, you can with safety award to them the residue of the claims up to the northern boundary of the State.

If they decline this proposition, then it is clear, in my opinion, that you are completely discharged from any obligation to act on the premises of the decision of Mr. Walker and Mr. Stuart; nay, it becomes impossible

for you to do so, for the very supposition of this alternative is that the State of Iowa denies the finality of the decision; that is, denies that, so far as regards her, it is a decision; and if not a decision for her, then it is not one for the United States.

In that event, you are forcibly thrown back on the first decision of the Government—that from which Mr. Walker departed—and must, in my opinion, absolutely refuse to approve any more selections above the Raccoon Fork; the effect of which would probably be to remit the parties to Congress, which alone has full power to cut the Gordian knot, in which this subject has been tangled up, by reason of the inexplicitness of the original act of Congress and the uncertainties regarding it' meaning, which have embarrassed the action of the successive administrators of the Government.

I am, very respectfully,

C. CUSHING.

Hon. R. McCLELLAND,
Sec'y of the Interior.

44 DEPARTMENT OF THE INTERIOR,
June 9, 1856.

SIR: I return herewith the papers in reference to the grant for the improvement of the Des Moines River, which accompanied your report of upon the 24th March, and enclose therewith several letters and arguments which have been received here since the date of your report.

Having submitted the subject to the Attorney-General for his opinion upon the questions involved, I enclose a copy of such opinion furnished me, under date of the 29th ult., and also a letter under date of the 5th inst. from the Hon. Reverdy Johnson (the attorney for the claimants under the grant) in regard to the conditions upon which subsequent approvals, up to the liniits of the State of Iowa, are recommended by the Attorney-General to be made.

In the subsequent action upon selections not yet approved, I have concluded to be governed by the advice of the Attorney-General as contained in the paragraph near the close of such opinion, beginning with the words, "I advise, therefore, that you propose to the State of Iowa and its assigns," and ending with, "You can with safety award to them the residue of the claim up to the northern boundary of the State."

It will be perceived from the endorsement on Mr. Johnson's letter, above referred to, that he has undertaken to procure the assent of the State and its assigns to the conditions referred to, so that the necessity is obviated of any direct proposition to that effect on the part of the Department, but no further action will be taken until the parties are heard from on this point.

In the certificate of approval hereafter prepared for my signature, on any lists submitted, the facts should be stated that the approval being based upon the prior action of the Department and upon the ground that the grant is to be confined to the northern boundary of the State of Iowa, the acceptance by the State and its assigns would be considered an acquiescence on their part in this limit, and an abandonment of all claim beyond it, as it is upon this basis alone I can feel justified in yielding my assent to the claim preferred.

Should the assent of the parties be given in writing, the certificate of approval will be so varied from the language above as to conform to that state of facts, but without losing sight of the real groundwork of my assent to the approval.

Respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

To Hon. THOS. A. HENDRICKS,
Commissioner of the General Land Office.

GENERAL LAND OFFICE,
July 14, 1856.

Hon. R. McCLELLAND,
Secretary of the Interior:

SIR: I have the honor to enclose herewith the letter of Wm. C. Johnson, esq., president of the Des Moines Nav. and Railroad Co. of Iowa, addressed to this office on the 9th of January last, and invite particu-
45 lar attention to the 1st request made therein, "That notice be immediately given to the proper land officers and the public that the lands in the odd sections on either side of the river (Des Moines) in a strip five miles in width to its sources are reserved by this grant, and are not subject to pre-emption or public entry."

Mr. Johnson was informed in reply, on the 21st of March last, that this office, being satisfied that the grant of lands made to Iowa by the act of 8th August, 1846, does not extend above the Raccoon Fork, that to said extent the alternate sections have been certified to the State and the grant satisfied, and that his request could not be complied with.

By the Attorney-General's opinion of the of 29th May last, communicated with your letter of the 9th ult., the views of this office are reversed, as that opinion, sanctioned by you, allows the claim of the State for lands above the Raccoon Fork and up to the north line of the State, along the east fork, a branch of the Des Moines River, on condition that the State will agree to the decision of Secretary Stuart as final, and relinquish all claim to lands in Minnesota Territory.

The question now submitted is, whether the Department will act upon Mr. Johnson's application before the formal assent of the State is given under the Attorney-General's opinion. In the opinion of this office, as the sanction of the State is considered proper, it should be obtained and filed before any further proceedings touching Mr. Johnson's application are ordered.

All of which is respectfully submitted.

With great respect, &c.,

JOS. S. WILSON,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
July 16, 1856.

SIR: I return herewith the letter of W. C. Johnson, esq., submitted in yours of the 14th inst., having relation to the grant for the improvement on the river Des Moines, and agree with you in opinion that action should be suspended in reference to the subject-matter, until the assent of the

proper authorities is obtained to the conditions mentioned in the Attorney-General's opinion of the 29th May and my letter of the 9th June last.

Respectfully, your ob'd't serv't,

R. McCLELLAND,
Secretary.

To Jos. S. Wilson, Esq.,
Acting Commissioner of the General Land Office.

General Land Office,
March 18, 1862.

Sir: The case of the claim of the State of Iowa, under the railroad grant, by act of 15th May, 1856, U. S. Statutes at Large, vol. XI, p. 9, so far as it traverses the Des Moines River improvement claim above the Raccoon Fork, under the act of the 8th August, 1846, U. S. Statutes at Large, vol. IX, p. 77, has been under examination at this office, and in
46 order to our definite action upon the claim of the State, under said railroad act of 1856, the following is respectfully submitted for your consideration:

First. There have been selected in the odd-numbered alternate sections within the six and fifteen mile limits of the following-named roads, 222,820.40 acres, viz:

For the Dubuque and Sioux City road	77,378.06
" " Iowa Central Air-line	109,756.85
" " Mississippi and Missouri	35,685.49

These lands, with exception of 20,124.19 acres of the 77,378.06 acres, selected for the Dubuque and Sioux City Railroad, are embraced in the odd-numbered sections which had been selected and approved to the State of Iowa, above the Raccoon Fork, under the rulings of your predecessors.

Second. In the case of the Dubuque and Pacific Railroad Company, plaintiffs in error, vs. Edwin C. Litchfield, the Supreme Court, at its December term, 1859, 23 Howard, page 66, ruled, in substance, that the State, under the Des Moines River improvement grant, of 8th August, 1846, had no valid title to any of the lands above the Raccoon Fork.

The enclosed map indicates, by letters C, D, E, the routes of the said roads east and west, and by F and G, in connection therewith, the location of the Des Moines River route, traversing the roads from north to south above said fork.

Now, the first question arising is, whether we shall now certify to the State of Iowa, under the railroad grant of 15th May, 1856, the lands described under the first head in the foregoing, in view of the principle settled by the aforesaid decision of the Supreme Court of the United States, notwithstanding there are outstanding lists in conflict therewith, certified to the State on account of the Des Moines River improvement grant, under date as follows, viz:

List approved by Sec'y Stuart, Oct. 30, 1851, containing		81,707.93	acres.
" " " " " March 10, 1852,	containing	143,908.37	"
" " " " McClelland, Dec. 17, 1852,	"	33,142.43	"
" " " " " 30, 1853,	"	12,813.51	"
Making a total of		271,572.24	"

By the joint resolution, approved March 2, 1861, Pamphlet Laws, 2d

session, 36th Congress, page 251, it is declared "That all the title which the United States still retain in the tracts of land along the Des Moines River, above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior, as a part of the grant by act of Congress, approved August 8, 1846, and which is now held by bona fide purchasers under the State of Iowa be, and the same is hereby, relinquished to the State of Iowa." Now, the question arising is, whether this joint resolution is designed to
47 affect any bona fide sale by the State of Iowa, under the color of the Des Moines River grant, falling within the range of the six or fifteen mile limits of the aforesaid railroad grants, or whether it only applies to such tracts as are not within the six or fifteen mile limits aforesaid, it appearing that there are 68,876.03 acres not included within the limits of either of the railroads, yet have been approved to the State under the river grant.

Regarding the decision of the Supreme Court as conclusive in fixing the principle restricting the Des Moines grant of 1846 on the north to the Raccoon Fork, and that consequently the railroad indemnity, as a legal right, is protected by the act of 3d August, 1854, Statutes at Large, vol. X, p. 346, making certified lists a conveyance, this office holds affirmatively on the point presented in the first question, and upon the second that the "joint resolution" relinquishes to the Iowa Des Moines venders only such tracts as are not required to make up the indemnity for the deficiency of the sections "in place," under the railroad grant of 1856.

Upon these points, however, the decision of the Secretary of the Interior is respectfully requested.

Very respectfully, your ob't serv't,

J. M. EDMUNDS,
Commissioner.

Hon. C. B. SMITH,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, April 10, 1862.

SIR: In answer to your communication of the 18th March last, making certain inquiries respecting the proper disposition of lands in Iowa granted to the State by act of Congress of 15 May, 1856, and by joint resolution approved March 2, 1861, I am of the opinion that they are to be disposed of as said act and resolution direct, without any regard to the act of 8th August, 1846, referred to in your letter.

It appears that the action of this Department in construing the last named act has been in no respect uniform, not sufficiently so to form a precedent for its present direction; and if it had, there are now other considerations which will control its action. The Supreme Court has decided in the case of the Dubuque & Pacific R. R. Co. vs. Litchfield, 23 Howard, p. 66, that the act of 8th August, 1846, did not cede any lands to the State above the Raccoon Fork, and the before-mentioned joint resolution declares that the lands above the Raccoon Fork were improperly certified as a portion of the grant of 8th August, 1846.

It follows, then, that such of those lands as are embraced in the act making the railroad grant, approved May 15, 1856, are to be disposed of

according to the terms of that act, and that without any regard to the fact of their having been certified under the act of 8th August, 1846.

After completely satisfying the demands of the State embraced by that act, so much of the residue of the lands north of the mouth of
48 Raccoon Fork as were certified under the supposed grant of August 8, 1846, and which the State of Iowa had sold to bona fide purchasers prior to the 2d March, 1861, will be also certified to the State of Iowa.

The act of 15th May, 1856, granting lands to the State for railroad purposes, excepts such lands as the rights of pre-emption have attached thereto. This last remark is made because it affects the case of Crilly, and may be others, claiming pre-emption on said lands.

Very respectfully, your obedient servant,

CALEB B. SMITH,
Secretary.

To the COMMISSIONER GEN'L LAND OFFICE.

GENERAL LAND OFFICE,
February 23, 1863.

SIR: Herewith I have the honor to lay before you a map, exhibiting that portion of the route of the Des Moines improvement interest as claimed north of the Raccoon, under the original grant by act of 8th August, 1846, vol. 9, page 77, and also the lines of three railroads, which traverse the same from east to west, in virtue of the railroad grant to that State by act of 15th May, 1856, vol. 11, page 9, and in reference to the matter respectfully submit the following:

1st. Under a construction given to the said Des Moines grant of 8th August, 1846, there was certified conditionally by your predecessors, tracts above the Raccoon Fork amounting in the aggregate to, acres..... 271,572.24

But in the case Dubuque & Pacific Railroad Co. vs. Litchfield, 23 Howard, the Supreme Court settled the principle whereby the Des Moines improvement claim above the fork, under said act of 8th August, 1846, was set aside and rejected.

2d. The State of Iowa thereupon came forward under the railroad grant by act 15th May, 1856, vol. 11, p. 9, and selects of the same lands mentioned under the 1st head the quantity of, acres..... 202,509.44

Leaving an area of, acres..... 69,062.80

of said Des Moines selections, not interfered with by the railroads.

The railroad selections thus made, and entered in lists No. 33 to 42 inclusive, herewith, embrace sections in "in place," and "indemnity" selections for

The "Dubuque & Sioux City,"
The "Iowa Central Air-line,"
The "Mississippi & Missouri Railroad,"

according to Schedule B, herewith.

The conflict of these railroad selections with the Des Moines was presented to your predecessor in report dated March 18, 1862, in connection with the joint resolution approved March 3, 1861, statutes 1860–'61,

page 251, which declares "that all the titles which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which
49 have been certified to said State improperly by the Department of the Interior as part of the grant by act of Congress approved August eight, eighteen hundred and forty-six, and which is now held by the bona fide purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa."

Secretary Smith, upon said report, ruled, under date 10th April, 1862, that "such of these lands as are embraced in the act making the railroad grant approved May 15, 1856, are to be disposed of according to the terms of that act, and that without any regard to the fact of their having been certified under the act of 8th August, 1846," and further directed that "after carefully satisfying the demands of the State embraced by that act, so much of the residue of the lands north of the mouth of the Raccoon Fork as were certified under the supposed grant of August 8, 1846, and which the State of Iowa had sold to bona fide purchasers prior to 2d March, 1861, will be also certified to the State of Iowa."

Now, in regard to this latter part of Secretary Smith's ruling, it is proper to invite attention to the fact that the sales thus alluded to by him and referred to in the joint resolution of 2d March, 1861, as made by the State of Iowa to certain purchasers, under the transcripts certified under said erroneous construction of the act of 8th August, 1846, for land above the Raccoon Fork, are reported as embracing all the lands thus "improperly" certified for the Des Moines improvement, above the said Raccoon Fork.

In this connection it will be observed that in the act of 12th July, 1862, Statutes, page 543, extending the Des Moines improvement to the northern boundary of Iowa, and providing for indemnity to that improvement interest, where the lands had been sold by the United States, there is an exception made as to those released to the venders of Iowa by said joint resolution, coupled with an express stipulation to this effect, that if the said State shall have sold and conveyed any portion of the lands lying within the limits of this grant (by act of July 12, 1862), the title of which has proved invalid, any lands which shall be certified to said State in lieu thereof, by virtue of the provisions of this act, shall inure to and be held as a trust-fund for the benefit of the person or persons respectively whose title shall have failed as aforesaid.

Now, in submitting these railroad lists for your consideration, in view of the application for your approval thereof, the question arises whether under said ruling of your predecessor these lists shall be approved to the State of Iowa as railroad lands, without reference to said sales, for which the said act of 12th July, 1862, provides an indemnity fund, where they prove invalid, or shall terms of saving and exception in respect to said sales be inserted in said transcripts.

Should it be determined by you that such terms are not required, in view of the indemnity stipulations above mentioned, the lists, as they now stand, are before you for approval, but if otherwise, it is respectfully suggested that you direct the insertion of such terms before approval as the nature of the case in your judgment may require.

50 3d. There is another important matter to be considered in the premises, and that is the force and effect of the said act of 12th of

July, 1862, in so far as the legal requirement is concerned, commanding the Department to grant indemnity to that improvement for lands sold or disposed of by the United States prior to the passage of said act, the Iowa sales excepted. The mode of dealing with this matter is presented in the report from this office, dated October 27, 1862, as approved by Secretary Smith, November 3, 1862, and the principles laid down in that report and ruling, will consequently govern this office in the adjustment of the extension interest, by said act of 12th July, 1862, unless otherwise directed by you.

With great respect, your ob't servant,

I. M. EDMUNDS, *Commissioner.*

Hon. I. P. USHER,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, April 7, 1863.

SIR: Your report of the 23d February last, in regard to the proper measures for carrying into effect the act of Congress approved July 12, 1862, by which the grant for the improvement of the Des Moines River was extended, has been carefully considered, in connection with your report of the 27th October last upon the same subject.

The Secretary instructs me to state that after mature deliberation, and examination of the additional exhibits filed since your report was received, he concurs in the views you have expressed. He has accordingly approved the lists of lands inuring to the State of Iowa, under the act of Congress of 15th May, 1856, which accompanied your report, and the same are now returned to your office that the usual transcripts may be furnished to the governor.

The argument of Mr. Mason, and the communication of Mr. Steiger and its enclosures, which have been received here whilst this matter has been pending, are also herewith transmitted.

I am, sir, very respectfully, your ob't serv't,

W. T. OTTO, *Assistant Secretary.*

To the COMMISSIONER OF THE GENERAL LAND OFFICE.

Also, map No. 1, referred to in the foregoing documents, being a skeleton map of the State of Iowa, indicating the sections and streams of the State, having in the margin explanatory notes, as follows:

The green color indicates: "Approved river lands above the Raccoon Forks."

Blue color: "Six mile limits of the railroad."

Yellow and pink: "Fifteen-mile limits of the railroad."

61 Also, note: "The Dubuque & S. C. Railroad only takes the lands between the black lines at A and B. Lands in the limits shaded green not taken for the railroad inures to the State under the joint resolution (or quitclaim) of Congress of 2d March, 1861."

On the map the green shade extends on both sides of the Des Moines River from the Raccoon Fork to the upper fork of the river in township 91, range 28.

This shading is also extended on the east fork of the Des Moines River to the north line of township 92, range 28.

The black line referred to in the marginal note crosses the Des Moines River in township 90 on the north, and township 88 on the south. The

yellow shading, indicating the fifteen-mile limits of the Dubuque & Sioux City Railroad, embraces the south half of township 92, range 31, township 91, ranges 29 and 30, and the south half of 91–28.

Plaintiffs introduced the following letter from Wm. T. Steiger, dated November 1, 1860: (See page 177, this abstract.)

Also, accompanying, the following list of lands duly certified by the register of the State land office, under date of September 11, 1860, certifying that the same is a correct list of all the lands situated outside of the six-mile and inside of the fifteen-mile limits of the Dubuque & Pacific R. R. which had been sold by the State of Iowa as part of the lands granted to the State by act of Congress approved August 8, 1846. Also a plat or map on which the lands described in said list are designated:

Part of section.	Sec.	Twp.	R'ng.	Acres.
SE. qr. SE. qr	3	86	27	40. 00
Lots 6 and 7	3	86	27	117. 35
SE. qr. NE. qr	15	86	27	40. 00
S. hf. NE. fr. qr	1	87	27	80. 00
S. hf. NW. fr. qr	1	87	27	80. 00
S. hf. NW. qr	11	87	27	80. 00
W. hf. SW. qr	11	87	27	80. 00
SW. qr. NW. qr	15	87	27	40. 00
SW. qr. SW. qr	15	87	27	40. 00
Lots 7 and 8	15	87	27	102. 20
52 Lots 2 and 3	23	87	27	79. 10
SE. qr. SW. fr. qr	31	88	27	40. 00
Lot 8	1	87	28	53. 35
SW. qr. NW. fr. qr	1	87	28	40. 00
SW. fr. qr. SW. qr	7	90	28	40. 15

Also the following list of lands, with plat of the same, certified by the register of the State land office, under date September 11, 1860, as a complete and correct list of all the lands situated inside of the six-miles limits of the Dubuque & Pacific R. R. which had been sold by the State of Iowa as part of the lands granted to the State by act of Congress approved August 8, 1846:

Parts of section.	Sec.	Twp.	R'ng.	Acres.
W. fr. hf. NW. qr	31	88	27	61 92
SW. qr	3	88	28	160. 00
Lot 4	5	88	28	38. 43
N. hf	9	88	28	320. 00
Lots 1, 2, 3, and 4	15	88	28	204. 38
Lots 5, 6, and 8	15	88	28	149. 75
SE. qr. SE. qr	15	88	28	40. 00
Lots 1, 2, 3 4, and 5	17	88	28	98. 50
Lots 6, 7, 8, 9, and 10	17	88	28	252. 05
Lot 4	23	88	28	58. 88
S. hf. SW. qr	23	88	28	80. 00
S. hf. SE. qr	23	88	28	80. 00
NW. qr	25	88	28	160. 00
W. hf. SW. qr	25	88	28	80. 00
Lot 1	27	88	28	32. 60
E. hf. NE. fr. qr	35	88	28	80. 00
W. hf. NW. qr	17	89	28	80. 05
W. hf. SW. qr	17	89	28	80. 00
SE. qr. SW. qr	17	89	28	40. 00
NE. qr	19	89	28	160. 00
E. hf. SE. qr	19	89	28	80. 00
Lots 1, 2, 3, and 4	19	89	28	206. 84
N. hf. NE. qr	29	89	28	80. 00
E. hf. NW. qr	29	89	28	80. 00
NW. qr. NW. qr	29	89	28	40. 00
Lots 1, 2, and 3	29	89	28	118. 21

53 Plaintiffs also introduced the following communication of the Secretary of the Interior, duly certified:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 28, 1865.

SIR: The authorized agents of the State of Iowa have taken exceptions to certain items charged by you to the State in setting apart the indemnity to be selected pursuant to the act of Congress approved July 12, 1862 (Stat., vol. 12, p. 543), for aid in improving the navigation of the Des Moines River.

From your report of the 14th March last it appears that the entire quantity of lands enuring to the State, as determined under the opinion of my immediate predecessor, dated Nov. 3, 1862, is 558,001.16 acres. You have decided that against said amount the State is chargeable:

1. With lands found in place as heretofore listed.....	224,961.17	acres.
2. With lands confirmed to the State by joint resolution of March 2, 1861, though not within five miles of the river.....	11,661.80	"
3. With an excess of land that has been listed to the State of Iowa under the grant by act of September 4, 1841.....	19,308.17	"
4. With the amount of a special certificate issued.....	300,000.00	"
Total acres.....	555,931.14	

Leaving a balance due of 2,070.12 acres.

The agents of the State, having taken an appeal from your action, claim that there is improperly included in the 1st item 12,813.51 acres of land that has heretofore been certified to the State under the grant of 500,000 acres by the act of Congress, approved Sept. 4, 1841, and that the 2nd and 3rd items as above have been erroneously charged, and should not enter into the account.

They also claim that you erred in refusing to sanction the selection of even-numbered sections along the Des Moines River which are alternate to the odd-numbered sections granted.

Having examined the subject, I am of the opinion that the 12,813.51 acres should not be charged in this account. These land' were approved to the State on the 17th Feb'y, 1851, under the grant of 500,000 acres, by the act of Sept. 4, 1841, and it is to be inferred from other facts stated that they have been sold by the State during the time intervening since the approval.

They lie above the Raccoon Fork of the Des Moines River, and hence were not a part of the original grant by the act of August 8, 1846, nor did the confirmatory act of 1861 create a title superior to that which was confirmed and recognized by this Department on the 17th February, 1851.

Indemnity for the tracts set apart for railroads within the five-miles limits of the Des Moines River grant has been allowed by the decisions of the Department dated November 3, 1862, and April 7, 1863, and I am of the opinion that these 12,813.51 acres stand in the same category as the railroad tracts, and that indemnity for them should likewise be allowed.

54 In regard to the item of 11,661.80, I am of opinion that it is a proper charge against the State in this account, although the lands do not lie within five miles of the Des Moines River, as now determined and delineated by geographers and the public surveys.

These lands, lying adjacent to the stream now known as the East Fork of the Des Moines River, but then known as the Des Moines River itself, were included in approved lists prepared under the act of Congress of August 8, 1846, and have been regarded as confirmed to the State by the joint resolution of March 2, 1861.

Though the words of that resolution and of the law of 1862 admit of a strong argument in favor of the claim that these lands are granted to the State as well as those which can be brought within the description given in the last-mentioned law, it is the opinion of this Department that under the act of 1862 they are to be charged to the State in adjusting the quantity of indemnity. They have been obtained for the object of the grants, and though entertaining some doubts upon the subject, I deem it to be the safer conclusion that it was not the intention of Congress that the quantity of the grant and selections should exceed the aggregate quantity of the odd-numbered sections lying within five miles of the Des Moines River, from its mouth to the northern boundary of the State of Iowa.

The proposal to offset a part of the lands inuring to Iowa under the Des Moines grant, against a quantity she had received in excess of the grant of 500,000 acres by act of Sept. 4, 1841, will be sanctioned if it can be done with the assent and under the proper authority of the State, and Messrs. Kilborn & Mason in behalf of the State, now, by letter of 17th February, undertake to complete an arrangement for a settlement.

The excess selections under the act of 1841, as you report, amount to 35,473.54 acres. Measures have heretofore been proposed by the State for reducing this excess, but they have not been carried into effect.

According to the principles above stated, the State has received, on account of the grant of 1862, for the improvement of the Des Moines River:

1st. Lands in place	212, 147. 66
2d. On the east fork of the river and under joint resolution of 1861	11, 661. 80
3d. Special certificate issued	300, 000. 00
Making a total of	523, 809. 46

Leaving a balance of land due of 34,191.70 acres.

This balance is nearly equal to the excess certified under the act of 1841, and I am assured that an effort will now be made, on the part of the gentlemen representing the State, for the satisfactory adjustment of the balance. No further selections will, therefore, be allowed for the present.

I do not think, however, that the Department has power, under any of the acts of Congress upon the subject, to enforce against the wishes of the State an arbitrary offset of the excess of the 500,000 acre grant, against the balance due for the Des Moines improvement.

55 I approve your refusal to sanction the selection of the even numbered sections with the limits of the grant as indemnity. Should such selections be allowed the alternation of the granted and reserved sections would be destroyed.

This alternation is expressly established by the acts of Congress making the grants, and for maintaining the same many good reasons might be assigned.

The papers in the case are now herewith returned.

I am, sir, very respectfully your ob't servant,

J. P. USHER, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

Also the following report of J. A. Harvey and accompanying documents:

EXHIBIT X.

Report of J. A. Harvey, Commissioner of the State of Iowa.

By virtue of the provision of the act appointing him, Mr. Harvey, as the commissioner for the State, proceeded to Washington, effected a settlement with the General Government of the Des Moines River land, which settlement was approved by the census board, and the following is the report of said settlement:

WASHINGTON CITY, *May* 21, 1866.

Pursuant to the authority conferred by the act of the State of Iowa, approved March 30, 1866, "for the adjustment of certain land claims with the General Government," I, Josiah A. Harvey, register of the State land office, and as commissioner on behalf of the State, do hereby assent to the adjustment as herein stated, the said adjustment to be held as binding and conclusive on the said State as provided in said act.

JOSIAH A. HARVEY,
Register of the State Land Office, and Commissioner on behalf of the State of Iowa.

WASHINGTON CITY, D. C., *May* 23, 1866.

To the honorable Census Board of the State of Iowa, Des Moines:

Pursuant to the requirements of chapter 79, of the acts of the eleventh general assembly, I have the honor to report that I have consummated an adjustment with the United States of the excess of lands received by the State under the grant Sept. 4, 1841; also the lands confirmed to the State by the joint resolution of March 2, 1861, and the lands falling to the State under the act of Congress of July 12, 1862, and transmit herewith for your approval a copy of the agreement containing the terms of said adjustment.

It will be observed that the State in this settlement is credited with the whole amount of land in odd-numbered sections and lying within five miles of the Des Moines, from the Raccoon Fork to the northern boundary of the State, determined to be 558,004.06 acres.

56 The State is then charged with the several quantities of land following, to wit:

1st. Indemnity land selected under special certificate, dated April 25, 1863..... 297,603.74 acres.

2d. Remaining lands in place yet to be certified..... 167,109.02 acres.

3d. Lands in place confirmed by the joint resolution of March 2, 1861 ..... 44,838.64 acres.

4th. Lands selected and heretofore certified on the east fork of the Des Moines River and more than five mile' from the western or main branch ..... 11,661.80 acres.

5th. The excess selected and approved to the State as a part of the 500,000 acre grant under act of Sept. 5, 1841 ..... 35,473.54 acres.

Making in all 556,686.74 acres, and leaving due to the State to balance whole amount of the grant, 1,317.32 acres.

For this balance a special certificate will be issued.

The 11,661.80 acres on the east branch of the Des Moines River, heretofore approved to the State as a part of the Des Moines River grant, and disposed of by the State as such, are held by the department under the decision of the Attorney-General to be a legitimate and proper offset to so much of this grant'; hence they are charged to the State in this settlement.

The 35,473.54 acres charged in excess under the 500,000-acre grant (act 1841) includes 22,660.05 acres over and above the 500,00' acres which is embraced in the book of diagrams approved and certified to the State on the 12th of September, 1854, and which has hitherto been considered as the excess, and also the 12,813.51 acres, which were once approved as a part of the 500,000-acre grant and afterwards rejected, and approved and certified as a part of the Des Moines River grant. These lands have been known as the river school lands. Notwithstanding that they have been disposed of as a part of the Des Moines River lands by the State, said chapter 79 requires that they shall be included and certified as a part of the grant of 1841.

Deeming it my duty to carry out the provisions of the law, regardless of my personal opinion as to their correctness or propriety, I have thus included these lands, thereby increasing said excess to 35,473.54 acres, and allowed them to be deducted from the amount of the Des Moines River grant due the State, as the department had determined.

The necessary and proper lists according to the terms of this adjustment will be made and approved by the secretary and delivered to me or sent to the State.

In the preparation of these lists all lands which appear at the General Land Office as having been selected as swamp under act of September 28, 1850, and all tracts to which pre-emption rights had attached prior to July 12, 1862, will be excluded.

If, however, any of the tracts thus listed and certified shall be found to have been duly selected under said act of September 28, 1850, and
57 shall be shown by legal investigation to be swamp or overflowed, or to belong to the State by said act, the Government will approve and certify other lands of like quantity in lieu thereof.

This adjustment, which I think is fair and just, and should be satisfactory to the State, will, when approved by you, be a final settlement between the State of Iowa and the United States of all claims under the Des Moines River grant, as well as of the act of 1841, except so far as valid and legally subsisting adverse rights may be found to exist to any of the tracts thus approved to the State.

The excess of the 500,000-acre grant (35,473.54 acres) thus deducted is

by an agreement between the State and the Des Moines Valley Railroad Company (the beneficiary of the grant) to be credited to said company at the rate of one dollar and twenty-five cents per acre, in the satisfaction of claims against the State on account of the improvement of the Des Moines River. Said company should therefore be credited on the claims they are under obligations to satisfy with the sum of $44,341.67.

My authority extends only to settlement with the General Government. I have no power to carry out this agreement between the State and the company. It is but just, however, to say that this settlement has been made with the United States with the full understanding that this arrangement should be carried out.

The company, through its agents, has for a long time been laboring to this end. The opinion and decision of the Secretary of the Interior, a copy of which, accompanying Mr. Kilborn's report, made last winter, is herewith transmitted for your examination in connection with this adjustment, is the result of their efforts.

The labors of these agents (Messrs. Kilbourne & Mason) heretofore in the premises have greatly relieved me, and enabled me to close up the settlement thus early. It is due the company that this credit be given as soon as possible.

I hope, therefore, that this entire arrangement will meet with your approbation, and that you will, as I think you have the right, and may safely do, fully consummate and carry it out by giving said company the benefit of said credit against said claims without delay.

Very respectfully submitted.

J. A. HARVEY, *Commissioner.*

Adjustment of the Iowa Des Moines River grant, under the act of July 12, 1862, *and joint resolution of March* 2, 1861.

Debit.

	Acres.
The State of Iowa with the quantity of indemnity lands selected under special certificate dated April 25, 1863.....	297,603.74
The lands in place to be certified	167,109.02
The lands in place confirmed by joint resolution of March 2, 1861	44,838.64
58 The quantity selected on the East Fork of the Des Moines River, and certified to the State under the original law of August 8, 1846.....	11,661.80
The excess selected and approved to the State under the 500,000-acre grant of 1841.....	35,473.54
	556,686.74
Remaining indemnity due the State.....	1,317.32
	558,004.06

CREDIT.

The State of Iowa with the whole area of the grant above the Raccoon Fork.....	558,004.06

J. M. EDMUNDS,
Commissioner General Land Office.

GENERAL LAND OFFICE, *May* 21, 1866.

DEPARTMENT OF THE INTERIOR,
May 22, 1866.

The adjustment, as herein stated, is hereby approved.

JAS. HARLAN, *Secretary.*

THE STATE OF IOWA, *ss:*

The within adjustment, as stated, is hereby approved by us for the State of Iowa, June 20, 1866.

W. M. STONE, *Governor,*
JAMES WRIGHT, *Sec'y of State,*
JOHN A. ELLIOTT, *Auditor,*
W. H. HOLMES, *Treasurer,*
Census Board.

The item in the annexed adjustment of 35,473.54 acres being excess selections under the 500,000-acre grant to the State of Iowa, approved to said State February 20, 1851, includes 12,813.51 acres, described as follows:

Parts of sections.	Sec.	Tp.	R'ng.	Acres.
W. hf. of SW. qr	5	87	26	80.00
All of	7	87	26	597.92
N. hf. of	9	87	26	320.00
S. hf. of	15	87	26	320.00
All of	19	87	26	609.18
N. hf. of	21	87	26	320.00
W. hf. of	23	87	26	320.00
NW. qr	27	87	26	160.00
W. hf. of E. hf. and E. hf. of W. hf	29	87	26	320.00
All of	31	87	26	605.92
N. fr. hf. of NW. qr., and lots 1, 2, 3, and 4	1	86	27	241.56
59 S. hf. of	11	86	27	320.00
W. hf. of SE. qr. and SW. qr	1	87	27	240.00
NE. qr	7	87	27	160.00
N. hf. of	9	87	27	320.00
E. hf. of	11	87	27	320.00
All of	13	87	27	640.00
Lots 3 and 4	15	87	27	113.90
All of	19	87	27	618.40
NE. qr., and NE. qr. of NW. qr	23	87	27	200.00
Lots 4, 5, 6, 7, 8, and E. hf. of SE. qr	23	87	27	275.50
All of	25	87	27	604.25
W. hf of	27	87	27	320.00
All of	29	87	27	640.00
All of	31	87	27	626.44
E. hf. of	33	87	27	320.00
W. hf. of NE. qr., SE. qr., and E. hf. NW. qr	31	88	27	320.00
SE. qr	3	87	28	160.00
NE. qr	11	87	28	160.00
E. hf of SE. qr., NW. qr. of SE. qr., and lots 1, 2, and 3	5	88	28	252.44
W. fr. hf. of section and NE. qr	7	88	28	468.00
E. hf. of section and N. hf. of NW. qr	11	88	28	400.00
SW. qr	13	88	28	160.00
W. hf. of SW. qr	17	88	28	80.00
E. hf. of NE. qr	19	88	28	80.00
S. hf. of	21	88	28	320.00
E. hf. of	25	88	28	320.00
N. hf. of section and SE. qr	33	88	28	480.00
Total				12,813.51

Subsequently to said approval the above lands were deducted from the lists as improper selections, because found in conflict with the river grant of 1846.

The above action of the Department rejected the above 12,813.51 acres

from the original lists was disapproved by the Secretary of the Interior under date of February 28, 1865; hence, and in view of the annexed adjustment, covering the whole amount of excess selected and approved in 1851, the title to said above-described lands is affirmed as enuring to the State of Iowa, from the 20th February, 1851.

GENERAL LAND OFFICE, *May* 28, 1866.

The above is respectfully submitted to the Hon. Secretary of the Interior for his approval.

J. M. EDMUNDS, *Commissioner.*

60 DEPARTMENT OF THE INTERIOR,
May 29, 1866.

Approved.

JAS. HARLAN, *Secretary.*

Filed in the State land office August 2, 1866.

J. A. HARVEY, *Register.*

The General Government having retained 35,473.54 acres of the lands belonging to the Des Moines River grant, under act of July 12, 1862, in settlement for same amount which was the excess selected under the 500,000-acre grant, the State census board has credited the Des Moines Valley Railroad Company (the beneficiary of the Des Moines River grant) with the said amount of lands at $1.25 per acre, as follows:

Whereas David W. Kilbourne, appointed and commissioned by the governor of the State of Iowa to select the indemnity lands and to procure the certification of all the lands belonging to the Des Moines River grant under the act of Congress approved July 12, 1862, found it necessary, in order to procure the certification of the same to the State, to allow the United States Government to retain thirty-five thousand four hundred and seventy-three acres and fifty-four hundredth' of an acre (35,473.54 acres) in settlement for the same number of acres, which were the excess selected and approved to the State under the five-hundred-thousand-acre grant of 1841 over and above the five hundred thousand acres.

And whereas the said David W. Kilbourne did report to the governor that the Des Moines Valley Railroad Company, late the Keokuk, Fort Des Moines and Minnesota Railroad Company, which company is the beneficiary of said grant and subject to other conditions, would consent that said lands should be so retained by the General Government on condition that said railroad company should be credited by the amount of lands so retained at one dollar and twenty-five cents per acre upon the claims due the State against said grant, as set forth in the ninth section of the act of the legislature approved March 28, 1864, granting said lands to said company.

And whereas the said David W. Kilbourne did report to the governor that the General Government required the consent of the State of Iowa by some duly authorized agent to the retention of said lands in settlement.

And whereas the legislature of State did, by an act entitled "An act for the adjustment of certain land claims with the General Government," approved March 30, A. D. 1866, authorize and empower J. A. Harvey to give such consent and make such settlement, with the approval of the cen-

sus board, and to procure the certification of the lands of said grant to the State.

And whereas said Harvey has given the assent of the State by the General Government of the said lands in settlement and has recommended that said credit be given to said railroad company on the said debts due to the State.

And whereas the said railway company, by Hugh T. Reid, its duly authorized agent for that purpose, has assented to the retention of said lands for the purpose of said settlement; therefore, the said settlement so
61 made by said Harvey, with the credit so recommended by him to be made to said railroad company, is hereby approved. And in consideration of said railroad company agreeing and consenting that said thirty-five thousand four hundred and seventy-three thirty-four hundredths acres of land contained in said grant of which said railroad company is the beneficiary should be retained by the General Government for the purposes aforesaid, and for the purpose of carrying out the said agreement on the part of said State with said railroad company, therefore it is hereby further ordered that said railroad company be credited on said indebtedness and upon the claims which it is required to pay, and said railroad company is hereby credited on the said indebtedness with the sum and amount of said thirty-five thousand four hundred and seventy-three fifty-four hundreth' acres of land at the rate and sum of one dollar and twenty-five cents per acre, being forty-four thousand three hundred and forty-one eighty-two hundredth' dollars, to date from the 20th day of June, A. D. 1866.

In testimony whereof we, the census board of the said State, have hereunto affixed our hands and the seal of said State.

Done by said census board while in session.

(Signed) W. M. STONE, *Governor*,
JAMES WRIGHT, *Sec'y State*,
[L. S.] JOHN A. ELLIOTT, *Auditor*,
W. H. HOLMES, *Treasurer*,
Census Board of the State of Iowa.

EXHIBIT XI.

Copy of resolutions of Des Moines Valley R. R. Co.

At a meeting of the board of directors of the Des Moines Valley Railroad Company, on the 12th of June, 1866, the following resolution was passed:

Resolved, That Gen. H. T. Reid be authorized and empowered to meet the census board of the State, and to act on behalf of this company in making a settlement in regard to certain lands retained by the General Government from the Des Moines River grant on account of a mistake in overcertifying the 500,000-acre grant, and that he be clothed with discretionary power in the matter.

H. T. REID, *Chairman.*

A. BRIDGMAN, *Secretary.*

EXHIBIT XII.

At a meeting of the board of directors of the Des Moines Valley Rail-

road Company, held on the 22d of January, 1866, the following resolution was submitted and adopted:

Resolved, That the Des Moines Valley Railroad Company does hereby assent to and accept the provisions of the general assembly of the State of Iowa, approved March 28, 1864, entitled "An act supplemental to
62 chapter 99 of the laws of the seventh general assembly, approved March 22, 1858, and relating to the Des Moines River land grant, and for the payment of certain credited claims, and releasing to the United States certain occupied lands included in said grant."

GEO. B. SMYTHE, *President.*

A. BRIDGMAN, *Secretary.*

GENERAL LAND OFFICE, *May* 10, 1856.

REGISTER AND RECEIVER, *Fort Dodge, Iowa:*

You will suspend from sale or location all the lands in your district situated south of the line which divides townships ninety-two and ninety-three until further orders. Acknowledge the receipt of this dispatch by telegraph and mail.

THOMAS A. HENDRICKS,
Commissioner.

GENERAL LAND OFFICE, *May* 15, 1856.

REGISTER AND RECEIVER, *Fort Dodge, Iowa:*

GENTLEMEN: By my telegraphic dispatch of the 10th inst. you were directed to suspend from sale or location all the lands in your district situated south of the line dividing townships ninety-two and ninety-three until further orders. The object of this withdrawal was to protect from sale the lands granted to the State of Iowa for four railroads running from the Mississippi River to the Missouri by a bill which had passed both Houses of Congress.

Said bill, having this day been approved by the President, has become a law, and you will continue to withhold the lands from sale or location until otherwise directed. It is designed to adjust these several grants with as little delay as practicable, in order that the lands remaining to the United States may return to market.

I am, very respectfully, your ob't serv't,

THO'S A. HENDRICKS,
Commissioner.

No. 591.

Notice for the restoration of certain lands to market in the State of Iowa.

The grant of land made by the act of Congress approved May 15, 1856, to the State of Iowa, to aid in the construction of certain railroads therein mentioned, having been so far adjusted as to authorize the release from withdrawal of the lands hereinafter described, notice is hereby given that all the vacant offered lands heretofore withdrawn from sale or entry along the routes of said railroads which lie outside of six miles on each side of the said roads, situated in the undermentioned townships, which have not been selected in virtue of said grant or any other grant made by Congress,

63 or legally claimed by pre-emption, and which were subject to private entry at the date of withdrawal, will be restored to private entry on the days and at the places hereinafter specified, at the ordinary minimum of one dollar and twenty-five cents per acre, to wit:

At the land office at Dubuque, on Monday, the fifteenth day of February next, viz:

North of the base line and east of the fifth principal meridian.

Townships 85, 86, 87, 89, 90, and 91, of range 1.
Townships 85, 86, 87, 88, and 90, of range 2.
Townships 84, 85, 86, and 87, of range 3.
Townships 84 and 85, of ranges 4, 5, and 6.
Township 84, of range 7.

North of the base line and west of the fifth principal meridian.

Townships 85, 86, 87, 89, 90, and 91, of range 1.
Townships 85, 86, 87, 89, 90, 91, 92, and 93, of range 2.
Townships 85, 86, 87, 88, 90, 91, 92, and 93, of ranges 3, 4, and 5.
Townships 84, 85, 86, 87, 88, 90, 91, 92, and 93, of range 6.
Townships 85, 86, 87, 88, 90, 91, 92, and 93, of ranges 7, 8, 9, 10, 11, 12, 13, and 14.
Townships 85, 86, 87, 88, 89, 91, 92, and 93, of ranges 15 and 16.
Townships 86, 87, 88, 89, 91, 92, and 93, of ranges 17 and 18.

At the land office at Fort Des Moines, on Monday, the 15th day of February next, viz:

North of the base line and east of the fifth principal meridian.

Townships 77, 79, 80, 81, 82, and 83, of ranges 1 and 2.
Townships 79, 80, 81, and 82, of range 3.
Townships 81 and 82, of ranges 4, 5, 6, and 7.

North of the base line and west of the fifth principal meridian.

Townships 77, 80, 81, 82, and 83, of range 1.
Townships 76, 77, 79, 80, 81, 82, and 83, of range' 2 and 3.
Townships 76, 77, 80, 81, 82, and 83, of range 4.
Townships 76, 77, 78, 80, 81, 82, and 83, of ranges 5 and 6.
Townships 76, 77, 78, 79, 81, 82, and 83, ranges 7 and 8.
Townships 76, 77, 78, 79, 82, and 83, of range 9.
Townships 76, 77, 78, 79, 80, 82, and 83, of range 10.
Townships 76, 77, 78, 79, 81, 82, and 83, of ranges 11, 12, 13, 14, 15, and 16.
Townships 76, 77, 78, 79, 81, 82, 83, and 85, of ranges 17, 18 19, and 20.
Townships 76, 77, 78, 81, 82, 83, and 85, of range 21.
Townships 76, 77, 78, 80, 81, 82, 83, and 85, of ranges 22 and 23.
Townships 76, 77, 78, 80, 81, 82, 83, and 85, of ranges 24, 25, and 26.

Townships 76, 77, 79, 80, 81, 82, 83, and 85, of ranges 28, 29, 30, and 31.

Townships 76, 77, 79, 80, 81, 82, and 83, of range 32.

Townships 76, 77, 79, 80, 81, 82, 83, and 84, of range 33.

64 At the land office at Chariton, on Monday, the 15th day of February next, viz:

North of the base line and west of the fifth principal meridian.

Township 73, of range 1.
Townships 72, 73, 74, and 75, of range 2.
Townships 68, 69, 71, 72, 73, 74, and 75, of range 3.
Townships 67, 68, 69, 71, 72, 73, 74, and 75, of range 4.
Townships 67, 68, 69, 70, 72, 73, 74, and 75, of ranges 5, 6, and 7.
Townships 67, 68, 69, 70, 71, 73, 74, and 75, of ranges 8, 9, 10, 11, 12, 13, and 14.
Townships 67, 68, 69, 70, 71, 72, 74, and 75, of range 15.
Townships 67, 68, 69, 70, 71, 74, and 75, of range 16.
Townships 67, 68, 69, 70, 71, 73, 74, and 75, of ranges 17, 18, 19, and 20.
Townships 67, 68, 69, 70, 73, 74, and 75, of range 21.
Townships 67, 68, 69, 70, 71, 73, 74, and 75, of ranges 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33.

At the land office at Fort Dodge on Tuesday, the twenty-third day of February next, viz:

North of the base line and west of the fifth principal meridian.

Townships 86, 87, 88, 91, and 92, of range 19.
Townships 86, 87, 88, 90, 91, and 92, of ranges 20, 21, 22, and 23.
Townships 86, 87, 88, and 92, of range 24.
Townships 86, 87, 88, 90, 91, and 92, of ranges 25, 26, 27, and 28.
Townships 86, 87, and 88, of ranges 29, 30, 31, 32, and 33.

At the land office at Sioux City, on Tuesday, the twenty-third day of February next, viz:

North of the base line and west of the fifth principal meridian.

Townships 86, 87, and 88, of range 34.
Townships 87 and 88, of ranges 35 and 37.
Townships 86 and 88, of ranges 38, 39, and 40.
Township 91, of range 41.
Township 90, of range 42.
Townships 86, 87, and 88, of ranges 43, 44, and 45.
Township 86, of range 46.

At the land office at Council Bluffs, on Tuesday, the twenty-third day of February next, viz:

North of the base line and west of the fifth principal meridian.

Townships 67, 68, 69, 70, 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, and 84, of range 34.

Townships 67, 68, 69, 70, 72, 73, 74, 75, 76, 77, 80, 81, 82, 83, and 84, of range 35.

Townships 67, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, and 84, of range 36.

65 Townships 67, 68, 69, 70, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, and 85, of range 37.

Townships 67, 68, 69, 70, 71, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, and 85, of range 38.

Townships 67, 68, 69, 70, 71, 73, 74, 75, 76, 77, 78, 83, 84, and 85, of range 39.

Townships 67, 68, 69, 70, 71, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, 84, and 85, of range 40.

Townships 67, 68, 69, 70, 71, 73, 74, 75, 76, 78, 79, 80, 81, and 82, of range 41.

Townships 67, 68, 69, 70, 71, 73, 74, 75, 77, 78, 79, 80, 81, and 82, of range 42.

Townships 67, 68, 71, 73, 76, 77, 78, 79, 80, 81, 82, and 83, of range 43.

Townships 68, 73, 79, 80, 81, 82, and 85, of range 44.

Townships 79, 80, 81, 82, and 85, of range 45.

Township 85, of range 46.

Given under my hand, at the city of Washington, this twenty-fourth day of December, anno Domino one thousand eight hundred and fifty-seven.

THOS. A. HENDRICKS,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *August* 13, 1860.

Hon. J. THOMPSON, *Sec. of the Interior:*

SIR: I have the honor to lay before you (No. 1) a proclamation of public lands in the Fort Dodge and Sioux City districts, Iowa, embracing 1,270,623 acres, heretofore unoffered; the sales to be held as follows:

At Fort Dodge, November 19, 1860.

At Sioux City, November 26, 1860.

This No. 1 proclamation embraces the lands in the yellow shades on the enclosed diagram A; also those in the blue shades. The blue shades are lands above the Raccoon Fork which had been claimed under the Des Moines River grant before the recent decision of the Supreme Court. It does not, however, embrace any of the lands south of the blue shade, and above the fork, which had been certified to the State under sanction of your predecessors according to the then claimed limits of the Des Moines grant.

No. 2 is an alternate proclamation for 496,730 acres, excluding the blue-shaded lands and only embracing the yellow, and is submitted in case it should be decided to wait action by Congress over the whole claimed extent of the Des Moines grant.

Very respectfully, your ob't serv't,

JOS. S. WILSON,
Commissioner.

No. 665.

By the President of the United States.

In pursuance of law, I, James Buchanan, President of the United States of America, do hereby declare and make known that public sales
66 will be held at the undermentioned land offices, in the State of Iowa, at the periods hereinafter designated, to wit:

At the land office at Fort Dodge, commencing on Monday, the 19th day of November next, for the disposal of the public lands, heretofore unoffered, situated within the following townships and parts of townships, viz:

North of the base line and west of the fifth principal meridian.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 93; sections, 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 98, of range 27.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 93; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 94; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 99, of range 28.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 93; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 94; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 99, of range 29.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 93; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 94; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 99; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 100, of range 30.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and

35, of township 93; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 94; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21,
67 23, 25, 27, 29, 31, 33, and 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 99; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 100, of range 31.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 93; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 94; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 99; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 100, of range 32.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 94; township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 97; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 99; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 100, of range 33.

At the land office at Sioux City, commencing on Monday, the 26th day of November next, for the disposal of the public lands, heretofore unoffered, situated within the following townships and parts of townships, viz:

North of the base line and west of the fifth principal meridian.

Sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 95; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 96; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 97; township 98; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 99; sections 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, of township 100, of range 34.

Townships 98, 99, 100, of range 35.

Township 98, of range 36.

Townships 98, 99, 100, of range 37.

Townships 98, 99, 100, of range 38.

Townships 98, 99, 100, of range 39.

Townships 98, 99, 100, of range 40.

Townships 99 and 100, of range 41.

Townships 99 and 110, of range 42.

Townships 99 and 100, of range 43.

Townships 99 and 100, of range 44.

Townships 99 and 100, of range 45.
Townships 99 and 100, of range 46.
Townships 99 and 100, of range 47.
Townships 99 and 100, of range 48.
Townships 99 and 100, of range 49.

68 Lands appropriated by law for the use of schools, military and otherpurposes, together with the "swamp and overflowed lands," will be exeluded from the sales.

The offering of the above lands will be commenced on the days appointed, and will proceed in the order in which they are advertised until the whole shall have been offered, and the sales thus closed; but no sale shall be kept open longer than two weeks, and no private entry of any of the lands will be admitted until after the expiration of the two weeks.

Given under my hand, at the city of Washington, this fourteenth day of August, anno Domini one thousand eight hundred and sixty.

JAMES BUCHANAN.

By the President:
JOS. S. WILSON, *Commissioner of the General Land Office.*

Notice to pre-emption claimants.

Every person entitled to the right of pre-emption to any of the lands within the townships and parts of townships above mentioned is required to establish the same to the satisfaction of the register and receiver of the proper land office, and make payment therfor as soon as practicable after seeing this notice, and before the day appointed for the commencement of the public sales of the lands embracing the tract claimed; otherwise such claim will be forfeited.

JOS. S. WILSON,
Commissioner of the General Land Office.

NOTE.—Under the regulations of the Department, as heretofore and now existing, no payment can be made for advertising proclamations except to such publishers as are specially authorized to publish by the Commissioner of the General Land Office.

Also map No. 2 of a portion of the State of Iowa containing a green shade on either side of the Des Moines River, indicating five-mile limits, extending from the Raccoon Fork to second correction line on south line of township 89.

Also containing a dotted line marked the "south boundary of the Sioux Indian territory as defined by the treaty of July 15, 1830," being the same dotted line as is found on map No. 3, a copy of which is hereinafter contained.

To which map is the following certificate:

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed map of Iowa is a true and literal exemplification of that portion of the Des Moines River and limits of grant as shown on the original on file in this office.

69 Dated April 30, 1878, duly attested by the seal of that office.

Also the following map, referred to in this abstract as map No.

3, being a copy of the map attached to the report of the Commissioner of the General Land Office of the United States for the year 1853.

Also, the following communication from the Commissioner of the General Land Office, with map attached, being map No. 4:

GENERAL LAND OFFICE,
January 28, 1858.

REGISTER AND RECEIVER, *Fort Dodge, Iowa:*

GENTLEMEN: For your guidance in disposing of the public lands I have this day transmitted you by mail a diagram of the district of lands subject to sale at your office, upon which has been traced the lines of route and the lines of the six and fifteen miles limit within the said district of the railroads, to aid in the construction of which a grant of lands was made to the State of Iowa by act of Congress approved May 15, 1856.

As all the vacant tracts in the odd-numbered sections outside of the six and within the fifteen mile limits have been selected by the agent of the State in lieu of the lands sold and pre-empted in the alternate sections granted by the act above mentioned, such tracts are not restored to market by notice No. 591, copy herewith, and you will, of course, continue to reserve them as heretofore from sale or location for any purpose whatever.

Respectfully, your ob't servant,

THOS. A. HENDRICKS,
Commissioner.

This map shows the line of the Dubuque & Pacific Railroad, and the six and fifteen miles limits thereof, and the five miles limits on either side of the Des Moines River; showing the north boundary of the fifteen miles limits of the railroad grant where the same crosses the Des Moines River, extending to the north boundaries of sections 8, 9, 10, 11, and 12, of township 91, range 28, and to the north line of sections 1, 2, 3, and 4, of township 91, range 29, and extends the shaded lines of the Des Moines River grant on each side of the Des Moines River as far north as the north line of township 91, ranges 28 and 29, and also indicates by this shading five sections in width on each side of the east fork of the Des Moines River as far north as the line aforesaid.

70 Also, map No. 5, being a copy of the map attached to the report of the Commissioner of the General Land Office of the United States for the year 1845.

Also, map No. 6, being a copy of the map attached to the report of the Commissioner of the General Land Office for the year 1861. This is a skeleton map of the State, showing the surveys in the State very nearly complete, indicating the east fork of the Des Moines River forming a junction with the main stream in township 91, range 28, and has no reputed boundary of Indian territory.

Also, map No. 7, being a copy of the map attached to the report of the Commissioner of the General Land Office for the year 1849. This is a skeleton map similar to map No. 3, indicating the south boundary of the Sioux Indian territory, the same as on map No. 3, and showing the surveys had extended at that time only as far north as the second correction line, except the surveys east of range 23.

Also the following annual report of the Commissioner of the General Land Office:

GENERAL LAND OFFICE,
November 28, 1849.

ANNUAL REPORTS OF THE SURVEYORS-GENERAL.

Report of the surveyor-general of Iowa and Wisconsin.

SURVEYOR-GENERAL'S OFFICE,
Dubuque, October 18, 1849.

SIR: I have the honor respectfully to communicate the following report:

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Nearly two thousand miles of township lines, located principally upon the Des Moines River and its tributaries, have been put under contract for survey in Iowa. This work will complete the townshipping of all the ceded lands east of the main Des Moines River, and embrace nearly four millions of acres of valuable land, the choicest parts of which are already claimed, and a considerable portion of which, it is believed, will be purchased as soon as it is subject to entry. These surveys include the continuation of the second correction line to the Missouri River. It was designed by the establishment of this line to determine the character of the country through which it would pass, and to establish a base for the survey of such parts thereof as might then or may hereafter be settled.
71 The deputy's report, however, is unfavorable; the soil between the Des Moines and Missouri Rivers, except in the vicinity of the latter, being quite poor, and there being an almost entire absence of timber.

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Northern boundary of Iowa.

By your communication of September 26, 1849, I was advised that Captain Thomas J. Lee had been detailed to fix the point of the intersection of the parallel of 43° 30′ north latitude with the Mississippi River, preliminary to the establishment of the northern boundary of Iowa upon this parallel; and I was further advised that for the execution of this work full instructions would be given me early next season.

The act of the 3d of March last, authorizing the running and marking of this boundary, contemplate sthe agency of the surveyor-general. I therefore herewith submit an estimate for this work, based upon the usual method of tracing a parallel of latitude. It is suggested, however, that this estimate makes no allowance for interruptions, but presumes that the line can be executed between the months of April and November. Should it be commenced, however, later than the first of May, there is great danger that the setting in of winter will prevent its completion in one season, in which event at least five thousand dollars should be added to this estimate. This boundary, throughout nearly its whole extent, traverses the territory of the Sioux Indians—a tribe that, upon a recent occasion, fearlessly and

insultingly plundered a party while in the execution of a public-land survey under authority of the Government, and who have upon previous occasions shown no hesitancy in perpetrating open and unprovoked robberies. In view of these facts I respectfully suggest the importance of occupying Fort Atkinson with a force of dragoons, to awe and, if necessary, chastise these Indians during the survey of the boundary line.

Plan for conducting the surveys in Minnesota west of the Mississippi River.

It has been in contemplation to establish a new meridian, to be styled the sixth principal meridian, commencing at some central point in the boundary of Iowa and Minnesota. The fifth principal meridian ceases sixty miles south of this boundary, being subsequently determined by offset. The accuracy and uniformity of the surveys demand a principal meridian. Upon examination, however, it has been found, for two important reasons, impracticable either to adopt the fifth principal meridian in, or to establish a sixth principal meridian for, the surveys of Minnesota west of the Mississippi River.

1. There has been very recently ceded a small tract of land in this division of Minnesota, adjoining Lake Pepin, which may be regarded as a proper index for the locality of future cessions. The object in effecting treaties with the Sioux Indians who now own the lands from the Mississippi to the Missouri River will be to obtain such of their lands as will first settle. This policy will lead to the earliest possible purchase
72 of all or any portion of their lands adjoining the Mississippi River.

By adopting the fifth or establishing a sixth principal meridian the cession already made, and others similarly located that will probably soon be made, cannot be surveyed without running either a base or meridian line, or both, through Indian territory, a service hazardous in itself and expensive to the Government.

2. The Mississippi River to the northern boundary of Iowa, has divided two series of surveys, and so long as it continues to be a meandered river may very properly do so; but the surveys upon the east side of that river have already very nearly reached the point where its size will not justify its being meandered, and when, of course, it can no longer divide distinct systems of survey. Besides, there is a vast tract of country, which is being steadily and rapidly approached by the surveys and settlements, lying north of the sources of the Mississippi, where, if the two systems are allowed to go forward, there will be no line or means of division whatever. To get rid of these difficulties and establish a system that should be free from these and similar objections has been a subject upon which I have bestowed much examination and thought, the result of which has determined me to adopt for the western division of Minnesota the same base and meridian to which the surveys in Eastern Minnesota and in Wisconsin are referable. This system proposes to adopt the numbering from the fourth principal meridian in Wisconsin and from the base line forming the southern boundary of that State for all the surveys lying north of the northern boundary of Iowa. * * *

SURVEYOR-GENERAL'S OFFICE,
Dubuque, August 15, 1849.

SIR: By a communication this day received from James M. Marsh, esq., one of my deputies, I am informed that a daring and unprovoked robbery has been perpetrated upon him by a band of Sioux Indians. He was employed in continuing the second correction line to the Missouri River, when, a short distance west of Des Moines River, in range thirty west of the 5th principal meridian, in the State of Iowa, he was met by a band of eleven Sioux warriors completely armed. They rushed suddenly upon him, but manifested friendship by shaking hands. Their real design, doubtless, was to ascertain the strength of his party and whether they were armed; for they shortly left and Mr. Marsh proceeded with his line. He had advanced but a short distance, however, when he heard the report of a gun, and again saw the Indians running on a line converging with his own, and firing as they ran. They were soon ahead of his teams, and, with guns pointed, ordered him to stop, unharness, and camp. His party consisted of seven men, unarmed; resistance was out of the question. After camping he explained to the chief of the band the character of his survey; that it was by authority of the Government, and that he was upon United States land; all of which the chief seemed aware, for he expressed credence in all that was said and seemed perfectly friendly. The Indians stayed over night in his tent, ate supper and breakfast with him, and received presents of provisions and clothing. The chief left his camp immediately af-
73 ter breakfast. He was no sooner gone than the Indians assumed an air of insolence, appropriating to their own use everything upon which they could lay their hands, not excepting his tent, which they cut to pieces. They then emptied his wagons, selected his best blankets and such other articles as they could pack, and left him. The ensuing night, however, they returned and openly stole all his horses (nine in number), and were sitting upon them near his camp the next morning. Immediately upon receiving this information I communicated it to the superintendent of Indian affairs, at St. Louis, Missouri, by telegraph. At the same time I learned that Major Murphy, subagent for the Sioux Indians, was at Galena, Illinois, on his way to St. Louis; to him I also telegraphed the substance of Mr. Marsh's communication, to which he replied that there were no dragoons at Fort Snelling, but that he would try to get some at Jefferson Barracks, and send them to the relief of my deputies, six of whom, I informed him, were similarly located with Mr. Marsh, and equally exposed to depredations from the same Indians. Still, the distance of Jefferson Barracks from the scene of this outrage leaves reason to fear that timely aid will not be rendered. The south boundary of the Sioux land is common to the north boundary of the ceded land of the State of Iowa, from the Mississippi to the Missouri River, and there are not at present any troops stationed within three hundred miles of this boundary. I deem it important to communicate these facts to you, as the progress of the surveys has been interrupted in a manner to excite serious apprehensions, not only for the progress of the surveys but the safety of the deputies.

I am, very respectfully, your obedient servant,

C. H. BOOTH, *Surveyor-General.*

Hon. J. BUTTERFIELD,
Commissioner of the General Land Office, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, December 3, 1850.

SIR: I have the honor to communicate herewith the annual report of the Commissioner of the General Land Office, with accompanying papers, exhibiting the operations of that branch of the public service during the last year.

I have the honor to be, sir, very respectfully, you' obedient servant,
ALEX'R H. H. STUART,
Secretary of the Interior.

Hon. WM. R. KING,
President of the Senate.

GENERAL LAND OFFICE,
November 30, 1850.

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REPORTS OF SURVEYORS-GENERAL.

SURVEYOR-GENERAL'S OFFICE,
Dubuque, Nov. 11, 1850.

SIR: In compliance with the provisions of law and the requirements of your Department, I have the honor to submit my annual report in triplicate.

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74 Unsurveyed lands in Iowa, Wisconsin, and Minnesota.

About seven-eighths of the whole area of the State of Iowa has been purchased of and vacated by the respective Indian tribes originally occupying it, and the remaining eighth is still possessed and occupied by the Sioux tribe. About two-thirds of its whole area is surveyed. Of the unsurveyed part the base lines are already run; and when the northern boundary shall have been established, the surveys will be as simple in character as the country is easy of access.

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System of survey.

After a careful examination of the system of public-land surveys as practiced under existing laws and instructions (which I have, during the last two years, had the opportunity of witnessing upon an extended scale), I think it is as perfect as the controlling circumstances under which it is practiced will permit. The act of the 20th of May, 1785, since modified but not essentially changed, originating the existing system of surveying the public lands, although it does not specially point out, fairly admits of a comprehensive and scientific application. But to such an application, in its strict sense, two important obstacles have existed, still exist, and perhaps will continue to exist throughout the survey of the public domain:

1st. The expenditure of that share of the annual appropriation for surveys assigned to this district has been restricted to a period never exceeding and often less than one year. While the instructions accompanying the notice of the amount thus apportioned have in each case required the sur-

vey of such lands as would command the most ready sale, it has been found by the surveyor-general that, in order to conform to these instructions, the subdivision into sections must follow closely upon the survey of the township lines. The rapidity with which the settlements have advanced, and, in consequence, the pressing demands for surveys that should expose the lands to immediate sale, has seemed to forbid, and certainly has operated to prevent, the introduction of a system requiring more time in its reduction to practice.

2. The inviolable practice has been to survey no lands until the Indian title thereto was extinguished and the Indian occupancy terminated. Hence the surveys have followed in the track of the aboriginal cessions, and these cessions have been obtained without any reference to the accommodation of the surveys, and have been so limited in area and so various and irregular in figure as not to admit of the proper establishment of a basis for the surveys, which, after much reflection, I believe would most properly have consisted in marking given parallels without reference to civil divisions, and at stated and equal distances establishing true meridians. These preliminary standards should have been fixed with the utmost precision, and would thus have become a complete and effectual check upon the survey of townships. The system as at present applied aims at the same result, but the means are limited, and what should properly be executed by one man is compulsorily intrusted to many. Great
75 advances, however, have been made towards accuracy within the last few years. The magnetic needle, except to show the deviation of the magnetic from the true meridian at stated points, has been discarded upon all but sectional lines, and an instrument which gives the true meridian and is capable of tracing a parallel of latitude has been substituted. I allude to Burt's patent solar compass, which in theory is strictly accurate. The solar apparatus, upon the present plan of construction, is so circumscribed that perhaps perfect accuracy is not attainable; although, in the hands of a careful and faithful officer, who understands it thoroughly and will test its adjustment very often, the errors will in all instances be very slight. It might be enlarged, but its portability would thus be destroyed, and it would, particularly where its use is at present most indispensable, be lost to the service. Due reference is had to the figure of the earth, both in the establishment of base and meridian lines; but the discrepancies that are inseparable from a practice limited as before described, and restricted to a certain rate per mile, are not referred to frequent lines of known and indisputable accuracy, as would have been the case had the above suggested plan of preliminary standards been adopted. These discrepancies, however, are slight and compensative; and, what is of primary importance, the quantity of land is, in all instances, accurately determined.

I therefore cannot recommend any change in the present practice of surveying the public lands, unless it be, as before indicated, in the prior survey of parallels and meridians, by which the deputy may correct himself, and by which any departure from a correct survey in the field may be readily detected upon examination of the notes. These standards should be, if practicable, established during the existence of the Indian title, and before the detailed surveys can be either demanded or expected. This plan would but slightly increase the cost of surveying at first, and it is evident would cost no more in the end; especially when it is considered that the

bounds of these large tracts will be marked with the proper quarter sections, sections, townships and ranges, and that they will thus become the basis for the prosecution of a survey in any direction. Instead of running the whole country into townships, as is now absolutely necessary, no more will be required to be townshipped than is needed for immediate subdivision. The surveys within any one, or any part of any one, of these large tracts may be pretermitted without retarding in the slightest degree the surveys elsewhere.

Also, the following from the report of the same officer for 1851:

Report of the Commissioner of the General Land Office.

GENERAL LAND OFFICE,
November 26, 1851.

SIR: * * * It is understood in reference to the section of
76 country west of the Mississippi, in Iowa and Minnesota, that the recent treaties of cession not yet ratified with certain bands of the Dakota or Sioux Indians, together with the treaties heretofore made with the Chippewas, comprehend the residue of the lands previously held by the Indians in the northern part of Iowa contiguous to the northern boundary of that State. And further, that the said treaties embrace those lands in Minnesota, extending as far north as the Crow Wing and Leaf Rivers of the Upper Mississippi, and Pijiki or Buffalo River, emptying into the Red River of the North," which flows into Lake Winnipeg, and as far west as the west bank of said Red River, and also to that of the Big Sioux River, which empties into the Missouri. These cessions include a body of land extending on the Mississippi River from the north boundary of Iowa as far north as Fort Gaines, near the mouth of Nokay River, embracing the important neighborhoods of Lake Pepin, Fort Snelling, and Falls of St. Anthony, opposite to which are extensive settlements and progressing surveys. Estimates for surveying these lands are not, however, submitted, the treaties with the Dakotas not having been ratified.

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SURVEYOR-GENERAL'S OFFICE,
Dubuque, October 24, 1851.

SIR: In compliance with the usage and requirements of your Department, I have the honor to submit the annual report of the operations of this office during the year ending this day.

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North boundary of Iowa.

By an act of Congress approved 3d March, 1849, the northern boundary of this State was fixed at 43° 30′ of north latitude, and was to be "surveyed by the surveyor-general of Wisconsin and Iowa, under the direction of the Commissioner of the General Land Office." That office having decided that the "instruments necessary to determine that point were

seldom possessed by deputy surveyors," deemed it expedient to have the intersection of the designated parallel with the Mississippi River determined by the Topographical Bureau. On application an officer was detailed for that service and my predecessor informed of that fact by a communication dated September 26, 1849. During the fall of that year the point was determined by Captain Thomas J. Lee, and on the 30th September, 1850, an appropriation was made to defray the expense of surveying the boundary. As the season was too far advanced for anything to be done in regard thereto during that year, it was confidently expected that in the ensuing spring directions would be issued from your office to carry the law into effect. That these expectations have been disappointed is deeply to be regretted, for, aside from the dissatisfaction expressed by the people of our State should the recent treaty with the Sioux and other bands of Indians be ratified, the surveys in Minnesota west of the Mississippi will be delayed until this line, which will be the base for
77 surveys in this Territory, shall have been established permanently and marked, while those in Iowa south of the line must also be retarded. I am gratified to learn by your letter of the 13th September that arrangements will be made during the coming winter to secure the establishment of this important line early in the spring of 1852.

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Recommendation for survey the coming season.

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In Iowa, should the recent treaty with the Sioux be ratified, I deem it of the highest importance that the remainder of the State be surveyed into townships, when such portions as are required can be put under contract for subdivision at any moment when the funds are on hand. The cost is so trifling (being but a fraction over two mills per acre), and the advantage so evident, that I would earnestly recommend that this course be adopted.

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Also the following from the

Report of the Commissioner of Indian Affairs.

DEPARTMENT OF THE INTERIOR,
OFFICE INDIAN AFFAIRS, *November* 27, 1851.

SIR: * * * During the past summer treaties have been made with various bands of the Sioux Indians, by which they cede a large and valuable extent of country west of the Mississippi River, in the Territory of Minnesota and State of Iowa. To the treaties themselves, and the report of the commissioners on the part of the Government by whom they were effected, you are respectfully referred for detailed information concerning these important negotiations. In view of the rapid spread of the white population in the State and Territory within which the lands acquired by these treaties are situated, the growing discontent among the warlike Indians from whom they are obtained, embroyled, as they often are, in

difficulties with the Chippewas, and threatening more and more the peace of the frontier in that quarter, the extinguishment of their title to the lands now ceded has long been a subject of serious consideration and desire by the Government.

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Respectfully submitted.

L. LEA, *Commissioner.*

Hon. A. H. H. STUART,
Secretary of the Interior.

78 LIST OF PAPERS ACCOMPANYING THE ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE YEAR 1851.

Report of Commissioner Lea and Sup't Ramsey, transmitting treaties with the Sioux Indians.

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MENDOTA, MINNESOTA TERRITORY,
August 6, 1851.

SIR: We have the honor to submit the following report of the proceedings as commissioners on the part of the United States to negotiate with the Dahcota or Sioux Indians of the St. Peter's and Mississippi Rivers, for the purchase of a large tract of their country in the Territory of Minnesota, and also a considerable area in the State of Iowa, to which the Indian title has not been extinguished.

After making the necessary preliminary arrangements, the undersigned left St. Paul, the capital of Minnesota Territory, on the 28th day of June, 1851, and proceeded to Traverse de Sioux, on the St. Peter's or Minnesota River, in the country of the Seesectoan and Wahpaytoan Sioux, that place having been fixed upon as the most eligible point for holding negotiations with those bands. It was our intention and desire, in the first instance, to meet all the bands in council at some spot near the mouth of the Minnesota River, and to make but one treaty with them all; but upon inquiry, we found that the feelings of the Upper and Lower Dahcotas were so diverse, and their interests, as they imagined, so opposite, that we were constrained to abandon the project of uniting them in one general negotiation.

The upper bands having received, some weeks previous, notice that they would be called together by the first of July, it was expected that they would convene at Traverse de Sioux within a short time after our arrival; but as these people were under the necessity of furnishing themselves with subsistence by hunting, at a distance from their villages, and as there was great difficulty in traversing the country in consequence of an unprecedented flood in the Minnesota and its tributaries, the Indians inhabiting the region about the headwaters of the river did not reach the council ground for many days after we were ready to receive them.

Messengers were dispatched to hasten their movements, and provisions were transported to meet them on their way; but they were not disposed to be hurried, and considerable delay was unavoidable. Meanwhile it was imperative upon us to supply the large number already on the ground with

daily rations of food, rapidly curtailing our stock of provisions, was a matter of serious concern, in view of the fact that our remoteness from the settled portions of the Territory precluded the possibility of procuring additional supplies without great difficulty and expense. By extraordinary exertion the chief, and a few principal men of the Upper Seesectoans, were induced to leave the large body of their delegation, and hasten
79 forward on horseback to the place of rendezvous. On their appearance it was decided at once to go into council, as the chiefs and headmen of the bands interested were all present.

It was on the 18th of July, full three weeks after our arrival at Traverse de Sioux, that the first council was held. The Indians were told in very distinct terms what their Great Father's object was in sending commissioners into their country, and a formal proposition was made them for their lands east of a certain line, and estimated to contain upwards of twenty millions of acres. It was explained to them that the purpose of emigration rendered it necessary that the whites should be furnished with a larger area, while the comparatively small number of Dahcotas might very advantageously be restricted within more confined limits; and that the President was disposed to place them in a permanent home where they might be concentrated, and apply themselves, under the protection of the Government, to learning the arts of civilized life, and particularly that of a proper cultivation of the soil, upon which they must in future depend for subsistence, rather than upon the precarious and uncertain fruits of the chase. They were further told that the President was willing, and desirous indeed, to give them a liberal sum in exchange for their lands, which it was the intention to purchase, and which to them could not be considered of much value, and that the purchase-money should be so applied as to minister not only to their present wants, but to their future advancement.

It was soon perceived that although there was a vague and indefinite idea on the part of these people that it was necessary for them to sell at least a portion of their country, in order to secure them against the misery and almost starvation, which the diminution in the number of the buffalo and other game for the last few years had inflicted upon them, yet, when they were brought to meet the proposition in a distinct and intelligent form, they appeared to shrink with undisguised reluctance from taking a step so important in its results. Several days elapsed before they would consent to any but terms of the most extravagant character; some few of their own number, having been taught to read, had impressed them with an idea that their country was of immense value, and they at first refused to treat unless the sum of six millions was paid them. Finally, on the 23d of July, they were induced to sign a treaty which, while it secures to the Government a large territory, second to none in value in the Northwest, embodies provisions of a simple but most beneficial character for the poor savages themselves, and well calculated, we think, if judiciously carried out, to save and elevate them from their present degraded condition.

Having distributed medals and presents, and conducted our business with the upper bands, we left Traverse de Sioux on the 14 of July, and descended the Minnesota River to Mendota, the trading-post at its mouth, at which point the Medaywakanstoan and Wahpaykootay bands were already in part assembled. On the 29th of July we were enable' to get

into council with these Indians, but found the obstacles to negotiating with them successfully much greater than the Upper Sioux, difficult as it was to bring them to terms. Several causes conspired to render a
80 treaty with the Lower Dahcotas exceedingly difficult of attainment. Among them we may mention, first, their proximity to the flourishing settlements on the east side of the Mississippi, producing necessarily frequent contact with the whites, whose ideas of the great value of the country had been imparted to these Indians; secondly, their great experience in Indian diplomacy, being in the enjoyment already of liberal annuities under former stipulations; and thirdly, their less necessitous condition in consequence of those annuities rendering them as indifferent to the making of another treaty at present as the whites on their borders were anxious that their lands especially should be acquired. Several public councils were unavailingly held before an approach to agreement was had between us. But finally, on the 5th of August, after a tedious session of the grand council, we were enabled to obtain their assent and signatures to a treaty similar in general features to the one negotiated with the upper bands, extinguishing on moderate but just terms the Indian title to the splendid region of country Nicolett and others long ago described as the garden spot of the Mississippi Valley.

Thus the undersigned, contending with many difficulties, have been enabled to effect two treaties which may be considered among the most important ever negotiated with our Indian tribes. They are important on account of the extent of valuable country purchased for a moderate price, and the provisions they embody for the future happiness, prosperity, and civilization of the Indians who are parties to them.

The amount of land acquired by these treaties is computed at over 35,000,000 of acres, and this amount, though large seemingly, is not greater than is consistent with the past policy of the Government on this subject, having in 1841 and 1849, as well as now in 1851, instructed its commissioners to embrace in their negotiations with the Eastern Bands of Sioux even a larger tract of country than we have just obtained. To have purchased a less number of acres would not have lessened proportionably the price of it, because it was evident to us in the progress of the negotiation that the influencing motive to sell at all was to obtain a large and certain amount of money, and that the number of acres in the country relinquished entered but little into the calculation of the Indians. If we had purchased less we must necessarily have stipulated to pay less to keep within the limit of our instructions, and this would have defeated the humane policy now universally regarded as incumbent upon Government of concentrating the Indians within fixed and narrow limits, and of making, at any rate suitable and adequate provision for their civilization and early abandonment of the hunter state, for the steady, settled, and more profitable labors of an agricultural life. Still, as all changes in the habits of a people, however rapidly pushed on, must be gradual to some extent, it is gratifying to know that the Indians in this instance will suffer no serious inconvenience by the sudden transfer of their entire country, as they will continue to hunt and fish, as at present, over a large portion of it for a number of years, and until needed for the white settlements. In making a large purchase another consideration had weight.

As a general policy the Government should own the lands on
81 which Indians live, or at least the lands to some extent around them. It is thus enabled the better to control the Indians and prevent wars and outrages among them. In this case, and for this reason, there was strong necessity that a wide expanse of the country owned by the United States should be interposed between the boundaries, respectively, of the Sioux and Chippewas. They are old, hereditary enemies, who, from time immemorial, have carried on a war against each other. Their hunting-grounds adjoin, and war parties of either tribe are constantly roaming into the territories claimed by the other. Frequent collisions and loss of life are the consequences; and when the agents of the Government call on a tribe to account for lives they have taken, the excuse is offered that the slain were intruding upon their lands—a sufficient justification, according to Indian ethics, for the most atrocious massacres. The insulation of the Sioux and their sale of the country between their future home and the Chippewa line, together with the allowance to them of annuities, will be more effectual in putting a stop to the war between the two tribes than an army could be, if kept constantly in the field for the purpose of holding them in check.

The extent of the purchase was augmented, also, by the necessity which extinguishment of the title of the four bands of Sioux negotiated with in the two treaties to a large body of land, five or six millions of acres in amount, lying in the State of Iowa, between the line of the old "Neutral Ground" and the northern and western boundaries of the State. This tract of country, and generally all lands whatever in the State of Iowa claimed by the Sioux, were therefore embraced in the articles of cession of both treaties.

The terms upon which the cession of so large a territory was made are undoubtedly most favorable to the United States, while at the same time they are just and liberal to the Indians. From all the information that could be obtained from reliable sources, and judging from what we ourselves saw of a considerable portion of the region purchased, we are satisfied that only a very insignificant portion of it is unfit for tillage and settlement.

The greater part is of unsurpassed fertility, capable of producing all the cereal grains and vegetables common to the Middle and Northern States, and also admirably adapted to the raising of stock.

The whole cost to the Government of the cessions by both Upper and Lower Sioux, is nominally $3,075,000. Of this sum $575,000 do not bear interest, but are to be paid in hand for various purposes specified in the treaties. The balance, $2,500,000, is held in trust by Government, and five per cent. interest thereon is to be paid, under different heads of expenditures, for fifty years, when the interest ceases, and the principal reverts to the Government; so that, in one sense, estimating the lands ceded to be worth and to yield the interest on their price, the actual cost to the Government for this magnificent purchase is only the sum paid in hand. Nor is any injustice done to the Indians by this arrangement. They receive a
liberal provision for fifty years, in which period their civilization
82 will have been effected, if ever it can be at all, and their ability to take care of themselves manifested, when a continuation of the payment of large sums annually would do them no further real good, and be inconsistent with sound government policy. The Medagwahanstoan Bands

of Sioux are already in the receipt of a permanent annuity of fifteen thousand dollars; and with this precedent before them, it was only by taking a determined stand from the first, that the undersigned were able to effect the treaties without yielding to the strenuous efforts of the Indians to have their annuities made perpetual. In pursuing this course, it was by no means our purpose to act otherwise than justly and generously towards the Indians. While we wished to make a good bargain for the Government, we were also anxious to secure to the poor savages a proper provision, in proportion to numbers, for their present wants and for their future support, comfort, and improvement. The number of Indians who will probably participate in the benefits of the treaty of Traverse de Sioux is estimated at about five thousand, while about three thousand will receive annuities under the treaty of Mendota. Upon the basis of this estimate the price of the lands was in a great measure graduated—keeping in view the principle before stated of providing for the adequate present support and prospective improvement of such a number of Indians. This much, at least, irrespective of the amount of land sold by them, we concede to be due from the Government to a people who are its wards and have peculiar claims to our sympathy, protection, and assistance.

In the details of these treaties, and in adjusting the interest payments to various purposes, it was our constant aim to do what we could to break up the community system among the Indians, and cause them to recognize the individuality of property. While the payment of annuities in goods has its advantages, its evil effects are equally apparent. The annual receipt of large quantities of merchandise in bulk, to be divided arbitrarily by the bands themselves, cannot but exercise a powerful influence in keeping up their present loose ideas of the rights of property. Another objection which experience has shown to this kind of annuities is, that apart from the inequality and partiality attendant upon their division, families and individuals generally receive articles which they do not need instead of others which they are worst in want of. It thus happens that a gun falls to the share of a man who wishes a blanket, and a woman receives a kettle who is already provided with that article. When cash payments are resorted to, and each receives a just proportion, all have the opportunity, at least, of procuring such things as they desire, while extortion is prevented by the competition among their numerous traders. Our own experience and observation in this regard have been confirmed by the testimony of worthy and enlightened missionaries, and of other intelligent and disinterested men who have watched the workings of the annuity system. They all concurred in stating their convictions that cash payments should entirely supersede those of goods, if the present and ultimate benefit of the Indians is to be consulted. Still, in deference to other intelligent and sincere well-
wishers of the Indians, who honestly entertain a different opinion on
83 this subject, and for some reason of present expediency, we concluded to adopt a medium; and, while allowing liberal cash payments, set apart a moderate amount annually for goods and provisions.

The leading object in both treaties has been to apply a large part of the purchase-money to the improvement of the Indians, having a due regard, as before intimated, to their number, character, and condition. In addition to the fund for the establishment of manual-labor schools, and the annual payment of five thousand dollars for their support, the fund reserved, to be ex-

pended annually for beneficial objects connected with the speedy civilization of this barbarous people, will be found to be a much larger proportion than has usually been the case. The general character which the Dahcota Nation bears is that of being warlike, but at the same time friendly to the whites, and not indisposed to follow in their footsteps as rapidly as their peculiar superstitions and erroneous ideas, imbibed by them from their childhood, will permit. By a judicious expenditure of the civilization and improvement funds provided for in these treaties, it may reasonably be expected that this powerful branch of the red race will soon take the lead among the Northwestern savages in agriculture and other industrial pursuits. By furnishing them the implements of husbandry, and by the employment of farmers, blacksmiths, and other artisans of good character among them to teach them farming and the mechanic arts; by training their youth to habits of industry through means of manual-labor schools, for which munificent provision has been made, and by the total exclusion of spirituous liquors from among them, there is reason to hope that not many years will elapse before the Dahcotas will show conclusively the absurdity of the hypothesis that the aboriginal race on this continent are incapable of civilization, and doomed to speedy and utter extinction.

A new and most desirable feature, in our opinion, has been embodied in these treaties. The President or Congress is empowered to prescribe such rules for the government of the Indians themselves as may be deemed proper and expedient. The adoption of such a provision will go far to cure one of the most obstinate evils with which those who labor for the civilization of the Indians have to contend. At present there is no law but that of the strongest. There is, consequently, no inducement held out to any individual to be more industrious than his neighbor, or to strive to amass property of any description. No redress can be obtained in case of depredation and outrage; and so the injured party, or his relatives, naturally resort to retaliation in kind. The power conferred upon the Government to put a stop to this state of things, and to institute tribunals to protect the well disposed against aggressions from others of the same tribe, and to punish the wicked and depraved, will, if exercised judiciously, operate to encourage the industrious to increase his stores and make himself and family comfortable, and will very soon break up the community system, which is now the bane and curse of these tribes.

It was considered proper to provide by treaty also for the protection of the Indians, that the "trade and intercourse laws," so far as the introduction of liquors is concerned, should remain in force over the ceded
84 lands until otherwise determined by the President or Congress. Although the Dahcotas are reputed comparatively temperate Indians, rarely indulging in the use of spirituous liquors, it was considered proper to throw this additional safeguard around them; and several of the chiefs stated in open council their earnest desire that some stringent measure should be taken by the Government to exclude all kinds of liquors from their new home.

The interests of steady and orderly white settlers, who will immediately pour in upon the new purchase, likewise demand that the law should be retained, as the only efficient means of restraining that depraved and pestilent class always found on an Indian frontier, whose despicable occupation is to make demons of both Indians and whites, by an indiscriminate traffic in intoxicating drinks.

One great difficulty to be overcome in effecting these treaties was the selection of a location for the future residence of the bands, equally satisfactory to us and to them. The lower bands of Indians now inhabit a country abounding in timber. They could not be brought to consent to a removal to the open prairie, and it was with much trouble that they could be induced to agree to go to the upper part of the Minnesota Valley, where the reservation has been made for the four bands together. This region is sufficiently remote to guarantee the Indians against any pressure on the part of the white population for many years to come; the country which they now inhabit, and from which they are to remove, being very extensive, and well calculated to sustain a dense population. In this new home, which is of comparatively small extent, they will be so concentrated as to be readily controlled and influenced for their real welfare. Farms will there be opened for them, mills and schools established, and dwelling-houses erected; and as gradually the white settlements close in around them, destroying the game and rendering a hunting life impossible, and as they will have within their own territory the means of living with a very little labor on their part, the force of circumstances alone will compel their resort to agriculture for subsistence; and this first great step gained the rest is easy, and their complete and speedy civilization must inevitably follow. To induce their early location on this reservation it was deemed expedient also to stipulate that no part of the hand-money should be paid them until after their removal, and means were likewise provided to subsist them the first year, it being contemplated to rapidly push on the farms and other improvements, so as always to produce from the soil thereafter enough for their support. Much more might be said, but we have endeavored to make the provisions of these treaties so plain and simple that they would need but little explanation to show their propriety; and we are well assured they are the best both for the Indians and Government that could under the circumstances have been effected.

The region of country acquired *by* them is larger than the State of New York, and rich, fertile, and beautiful beyond description. It is needed as an additional outlet to the overwhelming tide of immigration which is both increasing and irresistible in its westward progress. From the best
85 information we could obtain thousands are already eagerly waiting to enter upon this new purchase as soon as it is open for settlement. With extreme difficulty can the agents of Government now restrain them from rushing forward in advance, and occupying the lands without respect to the rights of the Indians or the authority of law. We are constrained to say, therefore, that in our opinion the time has come when the extinguishment of the Indian title to this region should no longer be delayed, if Government would not have the mortification on the one hand of confessing its inability to protect the Indian from encroachment, or be subjected to the painful necessity, upon the other, of ejecting by force thousands of its citizens from a land which they desire to make their homes, and which, without their occupancy and labor, will be comparatively useless and waste.

Respectfully submitted.

L. LEA.
ALEX. RAMSEY.

Hon. A. H. H. STUART,
Secretary of the Interior.

Plaintiffs also offered vol. 7, U. S. Stat. at Large, p. 328:

Articles of a treaty made and concluded by William Clarke, superintendent of Indian affairs, and Willoughby Morgan, col. of the United States 1st Regiment Infantry, commissioners on behalf of the United States, on the one part, and the undersigned deputations of the confederated tribes of the Sacs and Foxes; The Medawah, Kanton, Wahpacoota, Wahpeton, and Sissetong bands or tribes of Sioux, Omahas, Ioways, Ottoes, and Missourias, on the other part. July 15, 1830.

The said tribes being anxious to remove all causes which may hereafter create any unfriendly feeling between them, and being also anxious to provide other sources for supplying their wants, besides those of hunting, which they are sensible must soon entirely fail them, agree with the United States on the following articles:

ARTICLE I. The said tribes cede and relinquish to the United States forever all their right and title to the lands lying within the following boundaries, to wit: Beginning at the upper fork of the Des Moines river, and passing the sources of the Little Sioux and Floyds rivers, to the fork of the first creek which falls into the Big Sioux, or Calumet, on the east side; thence down said creek and Calumet river to the Missouri river; thence down said Missouri river to the Missouri state line above the Kansas; thence along said line to the northwest corner of the said state; thence to the high lands between the waters falling into the Missouri and Des Moines, passing to said high lands along the dividing ridge be-
86 tween the forks of the Grand river; thence along said high lands or ridge separating the waters of the Missouri from those of the Des Moines, to a point opposite the source of Boyer river, and thence in a direct line to the upper fork of the Des Moines, the place of beginning. But it is understood that the lands ceded and relinquished by this treaty are to be assigned and allotted under the direction of the President of the United States to the tribes now living thereon, or to such other tribes as the President may locate thereon, for hunting and other purposes.

ARTICLE II. The confederated tribes of the Sacs and Foxes cede and relinquish to the United States forever, a tract of country twenty miles in width, from the Mississippi to the Des Moines; situate south and adjoining the line between the said confederated tribes of Sacs and Foxes, and the Sioux; as established by the second article of the treaty of Prairie du Chien, on the 19th of August, one thousand eight hundred and twenty-five.

ARTICLE III. The Medawah-Kanton, Wah-pa-coota, Wahpeton and Sisseton bands of the Sioux, cede and relinquish to the United States forever, a tract of country twenty miles in width, from the Mississippi to the Des Moines river, situate north, and adjoining the line mentioned in the preceding article.

(Articles 4 to 13 omitted in the abstract as immaterial.)

Also treaty of August 5, 1851, found on p. 954, vol. 10, U. S. Statutes at Large, of which art. 2 reads as follows:

"The said Med-ay-wa-kan-toan and Wah-pah-koo-tay bands of Indians do hereby cede and relinquish all their lands, and all their right, title and claim to any lands whatever in the territory of Minnesota, or in the State of Iowa."

(The remainder of the treaty is omitted in this abstract, being immaterial.)

EXECUTIVE OFFICE,
Des Moines City, Iowa, March, 1860.

STATE OF IOWA, *set:*

In pursuance of the provisions of the fourth section of the act of Congress approved May 15, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the construction of the particular twenty miles from the city of Dubuque, exhibited on the annexed map, has been completed according to law, being the fourth twenty continuous miles of said road.

In testimony whereof I have hereunto set my hand and caused to be hereto affixed the great seal of the State of Iowa the day and year above written.

[L. S.] (Signed) SAMUEL J. KIRKWOOD.

By the governor:

(Signed) ELIJAH SELLS,
Secretary of State.

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EXECUTIVE OFFICE,
Des Moines City, Iowa, April 25, 1861.

STATE OF IOWA, *set:*

In pursuance of the provisions of the fourth section of the act of Congress approved May 15, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," I, Samuel J. Kirkwood, governor of the State of Iowa, do hereby certify that the construction of the particular twenty miles from the city of Dubuque of the Dubuque & Sioux City Railroad, exhibited on the annexed map, has been completed according to law, being the fifth twenty miles continuous of said road.

In testimony whereof I have hereunto set my hand and caused to be hereto affixed the great seal of the State of Iowa the day and year above written.

[L. S.] (Signed) SAMUEL J. KIRKWOOD.

(Signed) ELIJAH SELLS,
Secretary of State.

EXECUTIVE OFFICE,
Des Moines City, July 29, 1855.

In pursuance of the provisions of the fourth section of the act of Congress approved May 15, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," and of the eighth section of the act of June 2, 1864, amendatory thereof, I, William M. Stone, governor of the State of Iowa, do hereby certify that on the 2d of June, 1864, and for nearly six months thereafter, the westerly terminus of the completed portion of the Dubuque & Sioux City Railroad was the east bank of the Cedar River,

in section 12, township 89 north, range 14 west, and that the twenty miles of road next westerly thereof, as shown on the annexed map, being the sixth consecutive twenty miles from the city of Dubuque, were completed and ready for the rolling stock within one year from the first day of July, 1864.

In testimony whereof I have hereunto set my hand and caused to be hereto affixed the great seal of the State of Iowa the day and year first above written.

[L. S.] (Signed) W. M. STONE.

By the governor:

(Signed) JAMES WRIGHT,
Secretary of State.

Plaintiffs also offered in evidence the report of the register of the State land office for the year 1869, from page 233 to page 293, inclusive, containing list of lands, with the following heading:

88 *Dubuque and Sioux City and Iowa Falls and Sioux City Railroad lands.*

List of lands approved and certified to the State of Iowa to aid in the construction of the Dubuque and Sioux City Railroad (now the Iowa Falls and Sioux City Railroad and Dubuque and Sioux City Railroad, operated by the Illinois Central Railroad Company).

Among the lands contained in said list are the lands in controversy in this case and described in plaintiffs' petition.

The total number of acres contained in said list is 480,929.21.

Plaintiffs also introduced the following correspondence between W. C. Johnson, pres't Des Moines N. & R. R. Co. and Commissioner Thos. A. Hendricks:

WASHINGTON, *January* 9, 1856.

SIR: On the 8th of August, 1846, Congress granted to the Territory of Iowa the alternate sections of land unappropriated in a strip five miles in width on each side of the Des Moines River, for the purpose of aiding in the improvement of the river navigation.

The grant was first construed by Secretary Stuart as only extending to the Raccoon Fork, but the Secretary subsequently reversed that decision, decided that the grant covered the whole river to its sources which are situated in that portion of the territory since laid off for Minnesota, vide letters of Secretary Treasury of March 2, 1849, and of the Secretary of the Interior of 29th October, 1851.

The State of Iowa made its election of the odd sections throughout the river under the act of September, 1841, on the 20th July, 1850.

The lands in Minnesota are now being surveyed by the U. S. Gov't, and are supposed to be subject to pre-emption, and are being pre-empted.

The State of Iowa has contracted with the Des Moines Navigation and Railroad Company for the improvement of the river and for the sale to them of these lands, and the company, by the terms of the contract, represent the State of Iowa in matters appertaining thereto.

What we desire is—

1st. That notice should be immediately given to the proper officers and the public that the odd sections on each side of the river in a strip five miles in width to its source is reserved by this grant, and are not subject to pre-emption or public entry.

2d. No lands have been approved to the State since the lists of December, 1853. We desire further lists and plats to the extent of the present surveys.

89 3d. We wish also a new and complete list showing all the lands which on the 8th of August, 1846, remained "unsold and otherwise unappropriated," and consequently belonging to this grant.

For this purpose, as it is very important for us to have this information as soon as possible, we should esteem it a great favor to have a competent special clerk deputed at our expense.

Yours, very truly,

W. C. JOHNSON,
President Des Moines N. and R. R. Co.,
and on behalf of the State of Iowa.

To the Hon. T. A. HENDRICKS,
Com'r General Land Office.

GENERAL LAND OFFICE, *March* 21, 1856.

W. C. JOHNSON, Esq.,
President of the Des Moines Navigation
and Railroad Company, Washington, D. C.:

SIR: I have the honor to acknowledge the receipt of your communication of the 9th January, 1856, on behalf of the Des Moines Navigation and Railroad Company, in which you ask "that notice be immediately given to the proper officers and the public, that the lands in the odd sections on either side of the river (Des Moines) in a strip five miles in width, to its source, are reserved by this grant, and are not subject to pre-emption or public entry."

I have examined the act of Congress of 8th of August, 1846, "granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River," and am satisfied, both by the language of the act itself, and by the report of the committee made to the House of Representatives, during the session at which it was passed, that the grant does not extend above the Raccoon Fork. To that extent the alternate sections have heretofore been certified to the State of Iowa, and the grant satisfied.

I cannot comply with your above-mentioned request.

Very respectfully, your obedient servant,

THOMAS A. HENDRICKS,
Commissioner.

WASHINGTON, *March* 21, 1856.

Hon. ROBERT MCCELLAND,
Secretary of the Interior:

SIR: I beg to call your attention to a decision of the Commissioner of the General Land Office, which will appear in the correspondence, a copy of which is herewith submitted (his letter of 9th January and Commis-

sioner's answer 21st March), wherein he decides that the act of Congress of August 8, 1846, granting lands to the Territory of Iowa "to aid in the improvement of the Des Moines River," does not extend beyond the Raccoon Fork.

On the faith of the decisions of Secretaries Walker and Stuart, referred to in my letter of January 9, to Commissioner Hendricks, which declared that the grant extended to the sources of the Des Moines, the State of Iowa entered into a contract with the Des Moines Navigation and Rail-
90 road Company for the improvement of the river, the consideration to be paid being in part the lands included in this grant.

The act of Congress above mentioned will be found in the printed pamphlet herewith submitted and entitled, "First annual report of the president, &c., to the stockholders of the Des Moines N. & R. R. Co.," on pages 42 and 43, and the contract on pages 49 et seq.

The company, relying on those decisions, have gone on and expended large amounts of money during the past year and a half, and are now pushing on the work with all the force at their command.

The position, therefore, taken by the present Commissioner is one of most serious moment, and on behalf of the company who have succeeded to the rights of the State, and on behalf of the State, whose interest in these lands the company represents under the contract above mentioned, I beg to take an appeal to the Secretary of the Interior from the decision of the Commissioner.

In this communication permit me to refer you to the opinion of Attorney-General Johnson on this matter, to be found on page 27 of the "Biennial report of the board of public works of the State of Iowa," which accompanies this note, in addition to the letters of Secretaries Walker and Stuart, the former dated March 2, 1849, the latter October 29, 1851.

I cannot too earnestly solicit your early consideration of this question, involving, as it does, the interests of Iowa, and so seriously our company, which, relying upon the decisions heretofore, made in the daily outlay of large and constantly increasing sums.

With the highest respect, your ob't serv't,

W. C. JOHNSON,
Pres't Des Moines N. & R. R. Co.,
No. 244 F St., Washington.

(Endorsed:)
"Resp't'y referred to the Com'r of the Gen'l Land Office for report.
"GEO. C. WHITING, *C. C.*
"22 MARCH, 1856."

GENERAL LAND OFFICE, *March* 24, 1856.

Hon. R. MCCLELLAND, *Sec'y Interior:*

SIR: I have the honor to return herewith the letter of W. C. Johnson, esq., president of the Des Moines N. & R. R. Co., of the 21st inst., and its enclosures, taking an appeal from the decision of this office as made thereon to Mr. Johnson on the 21st inst., that the grant of land to Iowa Ter., made by the act of 8th August, 1846, for the improvement of the Des Moines River, does not extend above the Racooon Fork of said river, referred by you to this office for report on Saturday the 22d inst.

In reply I have to state that having carefully re-examined this subject

in connection with the correspondence, and come to the conclusion
91 that the plain letter of the law restricts the grant to the Raccoon Fork, my decision was communicated accordingly to Mr. Johnson in my letter of the 21st inst., a copy of which accompanies his present letter, not, however, until after a conference was had at this office with the Senators from Iowa and Allen H. Hall, of that State.

As to the "decision," so called, of Secretary Walker, and subsequent action of Secretary Stuart, to both which Mr. Johnson refers, I have to state that inasmuch as Secretary Walker approved the lists of selections above the fork, his was only an opinion in limine and not therefore entitled to the force of a decision upon an actual selection, and the correspondence shows that all the lists of selections above the Raccoon Fork, approved by Secretary Stuart, as explained in his letters to this office of the 26th July and 29th October, 1851, referred to in the captions of the lists, were approved with the qualifications that the views of Secretary Walker as to the extent of the grant were not adopted, but on the contrary that the grant was limited by the Raccoon Fork, and that the express object in not withholding his approval of the lists was not to prejudice any right which third parties might have, as Secretary Stuart considered it a judicial question.

One list I find has been approved in like manner during your administration without your attention having been particularly called to the point by the gentlemen then in charge, through whose direction the list was prepared in the usual form, was submitted on the 15th December, 1853, and was approved and returned on the 17th of the same month.

I herewith transmit the special file of this office relating to the grant and invite particular attention to the or papers marked "A," containing the report of this office of the 13th June, 1850, the opinion of Attorney-General Johnson, Crittenden and of the several Secretaries, Walker, Ewing, and Stuart, as setting forth all the minutiæ of the case. All which is respectfully submitted.

I am, with great respect, your ob't serv't,

THOS. A. HENDRICKS,
Commissioner.

Also the following documents:

WASHINGTON, *June* 6, 1860.

HON. JOSEPH S. WILSON, *Commis'r Gen'l Land Office:*

SIR: In behalf of the Iowa railroads, permit me, in reply to the argument of Charles Mason, esq., filed in the case of the Des Moines River improvement lands in Iowa, to call your attention, and through you that of the Department and the committee of Congress, to the simple fact that, long before the certification of any lists of lands above the Raccoon Fork, the State was repeatedly notified by the Department that her claim to those lands under the act of Congress, and the decision of Secretary Walker of 2d March, 1849, was illegal and untenable.

92 That the first notice was contained in the decision of Secretary Ewing, bearing date the 6th of April, 1850, in which he held that the grant did not go above the Raccoon Fork, and refused to approve lists. That the State authorities were again notified in the decision of Secretary Stuart of 26th July, 1851, fully concurring in the view of Mr. Ewing, and

finally that in certifying the first list on the 30th October, 1851, as was done in all the lists subsequently approved to the State, upon which it is claimed that the State based her sales, notice was given on their face that the approval was made subject to the decision of the courts, and subject to any valid interfering rights, and that the State and the public had notice besides through large masses of official correspondence up to the present time.

Hence it is a fact, that the State and her purchasers and assigns had ample notice.

They were not, therefore, innocent purchasers without notice, and it follows, I think, that the whole argument and appeal of Mr. Mason, resting as it does, upon this ground, is inapplicable to the case.

I am, very respectfully, your obedient servant,

WM. T. STEIGER, *Agent, &c.*

P. S.—I enclose duplicate of the above to save copying.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Dec. 29, 1868.

I, Orville H. Browning, Secretary of the Interior, do hereby certify that the annexed are true copies from the records of this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department to be affixed the day and year above written.

[L. S.] (Signed) O. H. BROWNING,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
June 11, 1860.

SIR: Herewith I have the honor to transmit a copy of the report of the Commissioner of the General Land Office of the 7th inst., upon Senate oint resolution No. 37, and the memorial relative to certain tracts of land heretofore certified to the State of Iowa, as part of the grant made to said State by the act of Congress of 8th of August, 1846, and to return all the papers submitted with your several letters of the 28th and 30th ultimo, and the 1st instant.

The Commissioner has sent with his report copies of two letters addressed to him by W. T. Steiger, esq., and one by Hon. Charles Mason, agents of the State, and having reference to the lands in question, and which it appears to be proper to lay before you. The draft of a bill is also herewith enclosed, which was furnished to Hon. Jas. W. Grimes, in a letter of this Department, dated the 22d ultimo, of which I also a enclose a copy.

In the matter of the grant for the improvement of the Des Moines River, as also adjusting the later grants for railroad purposes, the Department deals directly with the State, and not with parties claiming under her.

93 To a portion of the lands to which the joint resolution No. 37 relates, two claims under different laws of Congress have been preferred on behalf of the State.

The draft of a bill which I furnished to the Hon. J. W. Grimes contains such provisions as would enable the State to make a fair settlement with the parties who claim adversely to each other, under the respective grants, but does not depart from the simple proposition, that the same tracts of land have only been once granted to the same grantee.

Since my letter to Senator Grimes was prepared I have modified my views to some extent, and am now prepared to recommend the confirmation on the basis of the Department's draft of a bill of all the lands in contest which have been sold, granted, or conveyed by the State, and should this suggestion meet the approval of the committee the end proposed would be attained by striking out from the first section of the bill the following words, viz, "And have been settled upon and cultivated" (see lines 9 and 10), and inserting in their stead the words "or granted or conveyed."

It will be perceived that the bill of the Department proposes a settlement between the United States and Iowa, as a condition of the confirmation of the claim of the State to the tracts that have been certified to her improperly by the department. This plan I regard as strictly just, in view of the decision of the Supreme Court that said tracts constitute no part to the grant for the improvemnt of the Des Moienes River.

Should Congress, however, be willing to confirm the acts of my predecessors, and relinquish to the State all title now remaining in the United States in the tracts so improperly certified, I think that legislation should be confined to that single proposition.

The joint resolution No. 37, now before me, uses some very general and indefinite terms. The preamble is objectionable as giving but a limited recital of facts, such as have an argumentative bearing in favor of the propositions of the joint resolution.

Inasmuch as a fair recital of all the important facts would be cumbersome, I respectively suggest the omission altogether. The second part of the resolution is, in my opinion, liable to misconstruction, and likely to give rise to controversy as to its true meaning. Its probable effect would be, should it become a law, to secure to the State more land than this Department has ever recognized as having been granted.

In addition to a confirmation of all the tracts embraced in the list certified by the Secretaries of the Treasury and Interior, it appears to contemplate the allowance of scrip or selection all cases in which any of the lands on said lists have been otherwise "transferred," which would amount to an additional grant of so much land as is now involved in controversy between parties claiming adversely to each other, under the State of Iowa; the understanding of this Department being that the State has transferred to individuals, and an incorporated company, all the lands falling
94 to her under Des Moines grant, and to certain railroad companies all the lands which she will receive under the grants for the construction of railroads.

Three of the lines of the Iowa land-grant roads cross the strip of country along the Des Moines River where the lands lie which have been improperly certified under the Des Moines grant, and a large body of land is claimed under both titles.

Heretofore this Department has refused to recognize the claim under the railroad grant of May 15, 1856, because it had approved the selections of the same lands, under an earlier grant, that of 8th August, 1846; the uniform construction of railroad grants having been that they confer nothing upon a State, either as granted in place or as a basis of indemnity selections, where they interfere with prior grants to the same State. But

now, since the Supreme Court of the United States has decided that the certification of the lands along the Des Moines River, above the mouth of the Raccoon Fork, has conferred no title, and that the land was no part of the Des Moines grant, the claim of the State to a large portion of the same land, under the grant for railroad purposes can no longer be called in question, and the second title saves the land embraced by it to the grantee, although the prior title is regarded as worthless.

In this state of facts, it appears to me to be sufficient for the United States to assent to a relinquishment of any title which may still remain in them to the land erroneously certified to the State of Iowa, leaving the State and those claiming under her to settle the controversies which arise under the State laws, in the courts of the State.

If the State is called upon to settle with the United States, and accedes to the proposition, there appears to be some propriety in advancing to her land scrip with which to satisfy her own double grants of the same lands; but if she is not called upon for a settlement with the United States I am unable to perceive any principle upon which more land should now be granted her, in order that she may settle with persons to whom she has twice conveyed the same tract.

As adapted to carry out this simple proposition, I have the honor to submit the following form of a joint resolution, viz:

"Resolved by the Senate and House of Representatives of the United States in Congress assembled, That all the title which the United States still retain in the tracts of land along the Des Moines River, and above the Raccoon Fork thereof, in the State of Iowa, which have been heretofore certified to said State improperly by the Department of the Interior as part of the grant by act of Congress approved August 8, 1846, be, and the same is hereby, relinquished to the State of Iowa."

Beyond this simple proposition, the question arising upon the joint resolution No. 37 appears to be this: Shall the United States, because of the doing of void acts by her executive officers in the land depart-
95 ment, grant more land to Iowa than she could have had if the void act complained of had been clothed with the full authority of law.

Very respectfully, your ob't servant,

J. THOMPSON, *Secretary.*

Hon. R. W. JOHNSON,
Ch'r. Com. Pub. Lands, U. S. Senate.

No. 1.—*Special certificate.*

Whereas the act of Congress approved July 12, 1862, entitled "An act confirming a land grant to the State of Iowa and for other purposes," grants to the State of Iowa the alternate, odd-numbered sections, "in place" and undisposed of, lying within five miles of the Des Moines River, between the Raccoon Fork and the northern boundary of said State; and whereas said act provides that if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of said act, excepting those released to the grantees of the State of Iowa under the joint resolution of March 2, 1861, the Secretary of the Interior shall set

apart an amount of lands within said State to be certified in lieu thereof; and whereas it appears in the preliminary adjustment of said grantthat the United States had sold and otherwise disposed of a certain quantity of land prior to the passage of said act, for which the said State is entitled to indemnity under the act aforesaid: Therefore this is to certify that, upon the presentation of this paper to any of the land offices in the State of Iowa, accompanied by written authority from the governor authorizing the party presenting the same as State agent to make indemnity selections under said act, it shall and may be lawful for the register and receiver to receive lists of such indemnity selections from such agent, which list must be verified by the signature of the said agent, attested by the register and receiver, and be accompanied by their certificate that the lands so selected are vacant public lands subject to entry at private sale at $1.25 per acre; the aggregate of such selections to be restricted to three hundred thousand acres (as approximate to the actual quantity, to be reduced or increased according to the result of a final adjustment), and no selections to be made unless of tracts in compact form, not less than a quarter section, unless where a fraction of less quantity is selected and taken as equivalent to 160 acres.

Upon such selections being filed and verified as indicated and attached to this special certificate, the register and receiver are required to make entries accordingly on the plats and records of their office, and make monthly abstract returns to this office for such selections, separate from the ordinary monthly returns. When the aggregate authorized by this certificate shall have been selected, this certificate with the verified lists must be returned to this office.

Given under my hand and the seal of this office, at the city of Washington, th's 25th day of April, A. D. 1863.

[L. S.] J. M. EDMUNDS,
Commissioner of General Land Office.

NOTE.—Let the selections be made in tabular form according to accompanying Form A.

96 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
December 29, 1868.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copies are a true and literal exemplification of the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] JOS. S. WILSON,
Commissioner of General Land Office.

WASHINGTON, *Dec.* 1, 1866.

Hon. JOSEPH S. WILSON,
Com'r Gen'l Land Office:

SIR: In reference to the final adjustment of the Iowa Des Moines-River grant under the act of July 12, 1862 (Stat., vol. XII, p. 543), and joint resolution of 2d March, 1861, with J. A. Harvey, esq., commissioner on the part of the State, approved by the Secretary of the Interior May 22, 1866, as follows, to wit:

DEBIT.

	Acres.
The State of Iowa with the quantity of indemnity lands selected under special certificate, dated April 25, 1863.....	297, 603.74
The lands in place to be certified.....	167, 109.02
The lands in place confirmed by "joint resolution of March 2, 1861.....	44, 838.64
The quantity selected on the east fork of Des Moines River and certified to the State under the original law of August 8, 1846.....	11, 661.80
The excess selected and approved to the State under the 500,000 grant of 1841.....	35, 473.54
	556, 686.74
Remaining indemnity due to the State.....	1, 317.32
	558, 004.06

CREDIT.

	Acres.
The State of Iowa with the whole area of the grant above Raccoon Fork.....	558, 004.06
	558, 004.06

I respectfully ask to be informed whether or not the lists of lands certified to the State in pursuance of said adjustment include the lands to be held in trust for lands previously taken by the railroad grants of 1856, or otherwise disposed of, within the limits of the old river lists improperly approved under the act of 8th August, 1846 as provided by the act of 12th July, 1862.

I hold a deed from the Dubuque and Sioux City Railroad Company for the N. hf. and SW. qr. sec. 5, T. 87, range 27; and lots 2 and 3, and
97 NE. qr. of NE. qr. of sec. 1, T. 87, range 28, approved to the road within the old river claim, and the information now asked, as the approved lists are silent on this point, has an important bearing upon the validity of my title.

I am, with great respect, your ob't serv't,

WM. T. STEIGER.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Dec. 4, 1866.

SIR: In reply to your inquiry of the 1st inst., I have to state that the lists of lands approved June 14, 1866, to the State of Iowa under the Des Moines River grant of 12th of July, 1852, and joint resolution of March 2, 1862, include therein the lands to be held in trust as provided by said act.

Very respectfully, your ob't serv't,

JOS. S. WILSON, *Commissioner.*

WM. T. STEIGER, *President.*

Also certified copy of the map attached to the report of the Commissioner of the General Land Office for the year 1850, being map No. 8 of this abstract, and being a skeleton map, the same as No. 3, hereto appended, showing public surveys in Iowa, and containing the same dotted line marking the "south boundary of Sioux Indian territory as defined by the terms of the treaty of July 15, 1830," showing that the surveys had been completed only as far as the second correction line, except as to lands east of range 23.

Also map No. 9 of this abstract, being a copy of the map attached to the report of the Commissioner of the General Land Office for the year 1851, and being a skeleton map similar to map No. 3, showing the same boundary line, and showing the same facts as to completion of surveys as map No. 8, so far as is material in this case.

Also map No. 10, showing the location of the Dubuque & Pacific Railroad, and attached thereto the following certificates:

Map of the Dubuque & Pacific Railroad line through township 80, ranges 28 and 29.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
May 13, 1874.

I, W. W. Curtis, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of the map of Dubuque & Pacific Railroad line through township 89, ranges 28 and 29, and certifi-
98 cates, are a true and literal exemplification of that portion of the original now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] (Signed) W. W. CURTIS.

(Here follows a copy of map referred to, marked "Page 35.")

STATE OF IOWA, *ss:*

I, James W. Grimes, governor of the State of Iowa, do hereby certify that this plat or map of the Dubuque & Pacific Railroad and branch has been filed in my office by the president of the Dubuque & Pacific Railroad Company, and shows the location of the line and route of said railroad branch as definitely fixed by said company, in compliance with the act of Congress approved May 15, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," and with the act of the legislative assembly of the State of Iowa, approved July 14, 1856, entitled "An act to accept of and to carry into effect the trust conferred upon the State of Iowa by an act of Congress, entitled 'An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State, approved May 15, 1856.'"

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

Done at Iowa City this second day of October, in the year of our Lord

one thousand eight hundred and fifty-six, of the Independence of the United States the eighty-first, and of this State the tenth.

[L. S.] (Signed) JAMES W. GRIMES.

By the governor:

GEO. W. MCCLEARY,
Secretary of State.

OFFICE OF DUBUQUE & PACIFIC R. R. CO.,
Dubuque, Sept. 27, 1856.

It is hereby certified that in pursuance of the act of the legislative assembly of the State of Iowa approved July 14, 1856, entitled "An act to accept of and carry into effect the trust conferred on the State of Iowa by an act of Congress, entitled 'An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State, approved May 15, 1856,'" this map shows the location of the line and route of the Dubuque & Pacific Railroad from the city of Dubuque to a point on the Missouri River at Sioux City, with a branch from the mouth of the Tete des Mortes to the nearest point on said road as definitely fixed in compliance with said act of Congress, and in pursuance of a resolution of the board of directors of said railroad company, passed on the 26th of May, 1856, directing B. B. Provost, chief engineer of road, to locate and definitely fix said route; and that so much of the field work as is dated on said map since the 26th of May last was done in pursuance of said resolution; that so much of the field
99 *mark* as is dated on said map anterior to the 26th day of May last was located at the time indicated by said dates, in pursuance of several resolutions of said board directing said engineer to locate the same.

In testimony whereof the Dubuque & Pacific Railroad Company has hereunto attached its corporate seal and caused the same to be signed by its president and engineer, at Dubuque, this 27th day of September, A. D. 1856.

[L. S.] (Signed) J. P. FARLEY, *President.*

Attest:

B. B. PROVOST, *Engineer.*
H. P. LEECH, *Secretary of D. & P. R. R. Co.*

DEFENDANT'S EVIDENCE.

The defendant offered duly certified copies of the following documents:

EXHIBITS.

EXHIBIT 1.

An act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to said Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the

Raccoon Fork (so called) in said Territory, one equal moiety, in alternate sections, of the public lands (remaining unsold and not otherwise disposed of, encumbered, or appropriated), in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States.

SECTION 2. And be it further enacted, That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvements shall progress; that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sales shall cease until the governor of said Territory or State shall certify the fact to the President of the United States that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended; and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

100 SEC. 3. And be it further enacted, That the said river Des Moines shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or other charge whatever, for any property of the United States or person in their service passing through or along the same; provided always that it shall not be competent for the said Territory or future State of Iowa to dispose of said lands, or any of them, at a price lower than, for the time being, shall be the minimum price of other public lands.

SEC. 4. And be it further enacted, That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this act, and for no other; provided the legislature of the State of Iowa shall accept the said grant for the said purpose.

Approved August 8, 1846.

And thereafter, on or about the 9th day of January, 1847, Iowa (having then been duly organized and admitted as a State) fully accepted the said grant in said act of August 8 contained.

EXHIBIT 2.

On or about the 17th day of October, 1846, James H. Piper, Acting Commissioner of the General Land Office, addressed and forwarded to the then governor of Iowa an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *October* 17, 1846.

His excellency JAMES CLARK, *Governor of Iowa, Iowa City:*

SIR: By the first section of the act of Congress approved 8th August, 1846, entitled "An act granting certain lands of the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory," it is enacted "that there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called) in said Territory, one equal moiety in alternate sections of the

public lands (remaining unsold and not otherwise disposed of, encumbered, or appropriated), in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States."

Under this grant the Territory is entitled to the vacant lands in the alternate sections within five miles on each side of the Des Moines River, from Sullivan's line, the northern boundary of Missouri, to the
101 Raccoon Fork of the Des Moines River. The act authorizes the selection to be made by an agent or agents appointed by you, but as the grant is limited to an equal moiety of the unsold and unappropriated, &c., to be taken in alternate sections, the only selection which appears to be required, or which can be made under the law, is for you to determine whether you will take the lands in the sections having even numbers, as 2, 4, 6, &c., or those that have odd numbers, as 1, 3, 5, &c. The odd numbers would probably be most advantageous to the Territory, as in selecting the even numbers you would be deprived of the 16th section in each township, which, as you are aware, is reserved for schools.

Enclosed I send you a diagram of this grant, the boundary being colored pink, the alternate sections blue, and the school lands brown. I also enclose you a list showing the areas of all the sections or parts of sections within this grant, those having odd numbers in one column and the even numbers in another. When you have determined the sections you will select, please advise the land officers at Fairfield and Iowa City, who have been instructed to withhold from sale or entry of any kind, all the vacant and unappropriated land in the sections you may select. Please also advise this office, return the list and diagram, and a list of the vacant lands in the sections selected will be immediately prepared, submitted to the Secretary of the Treasury for his approval, as required by the law, and when approved will be certified to you.

With great respect, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

EXHIBIT 3.

On the said 17th day of October, 1846, the said James H. Piper, Acting Commissioner, addressed and forwarded an official letter to the register and receiver of the United States land office in Iowa City, of which the following is a copy:

GENERAL LAND OFFICE, *October* 17, 1846.

REGISTER AND RECEIVER, *Iowa City, Iowa:*

GENTLEMEN: By the first section of the act of Congress, approved 8th August, 1846, entitled "An act granting certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River in said Territory," it is enacted "That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Forks (so called) in said Territory, one equal moiety, in alternate sections, of the public lands (remaining unsold and not otherwise disposed of, en-

cumbered, or appropriated), in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States." This grant, you perceive,
affects the lands five miles in width on each side of the Des Moines,
102 from the southern boundary of your district to the Raccoon Forks of the Des Moines, as shown by the enclosed diagram.

No action can be had by you in this matter, however, till you are advised by the governor whether he will select the sections with the odd or those with the even numbers.

As soon as you are so advised, you will please reserve from sale or entry of any kind all the unsold and unappropriated lands in the sections selected by him, till further orders from this office.

Very respectfully, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

EXHIBIT 5.

Subsequently the governor of Iowa, as provided and contemplated by the first section of said act of August 8, 1846, appointed as agents to select, designate, and set apart the lands granted by said act, to the State, Jesse Williams and Josiah H. Bonney, who, on the 17th day of December, 1846, made a report to the governor of their doings as such agents by letter, of which the following is a copy:

IOWA CITY, *December* 17, 1846.

To His Excellency JAMES CLARK, *Governor of Iowa Territory:*

SIR: The undersigned, commissioners, appointed under the provisions of the act of Congress approved August 8, 1846, making a grant of land for the improvement of the Des Moines River, beg leave to report to your excellency that we have selected the odd sections as designated on the map furnished by the General Land Office, showing the location of the Des Moines and the sections of land within five miles of said river, which map is herewith returned to you.

Very respectfully, your obedient servants,

JESSE WILLIAMS.
JOSIAH H. BONNEY.

This map did not embrace lands not then surveyed.

EXHIBIT 6.

The general assembly of the State of Iowa, by act on the 24th of February, 1847, created a "board of public works," consisting of a president, secretary, and treasurer, to whom were committed the work, construction, and management of the river improvement, and the care, control, sale, and
disposal, and management of the lands granted to the State
103 under and by the said act of August 8, 1846. That said board was duly organized and went into operation on the 22d of September, 1847, and that on the 23d of February, 1848, Richard M. Young, then Commissioner of the General Land Office, addressed to said board of public works an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *February 23d*, 1848.

SIR: Your communication of the 29th of November last, enclosing a copy of yours of the 22d September last, has been received, and would have received an earlier response but for the erroneous and defective surveys along the Des Moines River, which prevented this office from submitting to the Secretary of the Treasury the selections made by the State of Iowa for the improvement of the navigation of that river under the act of the 8th of August, 1846. As these surveys have been corrected, action will be had on these selections as soon as possible, and when approved they will be certified to you.

It is not usual to furnish more than a diagram of the grant in cases of this kind, with a certified list of the tracts granted as above mentioned, and these will, of course, be transmitted as they can be prepared.

All the aid that this office can give the board of public works in the discharge of its duties will be cheerfully rendered, and if it is possible to procure copies of the reports of the Topographical Bureau of the examination heretofore made of the Des Moines River it will afford me pleasure to do so and forward them to you.

A question has arisen as to the extent of the grant made to Iowa by the act of 8th of August, 1846, and the opinion of this office has been requested on that point.

By the terms of the law the grant is of an equal moiety in alternate sections of the public lands remaining unsold, and not otherwise disposed of, incumbered, or appropriated, in a strip of five miles in width on each side of the river, to be selected within said Territory, &c., &c., and the proceeds are to be applied in the improvement of the navigation of that river, from its mouth to the Raccoon Forks. Hence the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river, within the limits of Iowa.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

CHARLES CORKERY, Esq.,
Secretary of Board of Public Works, Fairfield, Iowa.

104 EXHIBIT 7.

On the (19) nineteenth of June, (1848) eighteen hundred and forty-eight, without any notice of a change of opinion, a proclamation was issued, signed by the President and countersigned by the Commissioner of the General Land Office, ordering into market some of the lands which lay above the Raccoon Fork, and which would belong to the State according to the rule laid down in the aforesaid letter of the (23) twenty-third of February, (1848) eighteen hundred and forty-eight. The sale was to take place on the (16) sixteenth of October, 1848.

EXHIBIT 8.

On the 18th of September, 1848, Charles Corkery, secretary of the Iowa board of public works, addressed and forwarded to R. M. Young, Commissioner of the General Land Office, a letter, of which the following is a copy:

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, Sept. 18, 1848.

SIR: The attention of this office has been called to the proclamation of the President of the United States, bearing date the 19th June last, for the sale of lands in Iowa, by which I perceive that the lands donated to this State for the improvement of the Des Moines River are to be offered for sale at Iowa City on Monday, the 16th October next. These lands are situated above the Raccoon Fork of the Des Moines River, in townships No. 79, 80, &c., ranges No. 25, 26, &c., and a sale by the United States will be in conflict with your opinion expressed to me in your letter of the 23d February last, in which you say that "the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river within the limits of Iowa."

Your very liberal opinion has influenced this board to place sixty miles of the contemplated improvement under contract, in addition to the thirty miles first let, and the State would now be greatly embarrassed by any impediments to her favorable prospects in this regard. We believe that the fact of having these lands embraced in the proclamation was an oversight, without any intention to curtail the resources of the State, and that it will be corrected on being discovered.

Very respectfully, sir, your obedient servant,

CHARLES CORKERY,
Secretary of Board of Public Works.

Hon. R. M. YOUNG,
Commissioner of General Land Office.

105 [NOTE.—A copy of the foregoing letter has been inclosed in the following letter to the register of the land office at Iowa City:]

EXHIBIT 9.

On the same day (September 18, 1848,) the said Charles Corkery, as secretary of the board of public works, addressed to C. Neely, register of the United States Land Office, at which the sale was ordered to take place, the protest of which the following is a copy:

OFFICE OF THE BOARD OF PUBLIC WORKS,
Keokuk, Iowa, Sept. 18, 1848.

SIR: I inclose you a copy of a letter which I have transmitted by this day's mail to the Commissioner of the General Land Office at Washington City, and *to* take this opportunity of protesting against the sale of the lands therein referred to.

This protest is based not only on the act of Congress donating lands to the State of Iowa for the improvement of the Des Moines River, but also on the decision of the Commissioner of the Generol Land Office, bearing date the 23d February, 1848, in the words as follows: "A question has arisen as to the extent of the grant made to Iowa by the act of the 8th August, 1846, and the opinion of this office has been requested on that point. By the terms of the law the grant is of an equal moiety in alternate sections of the public lands remaining unsold (and not otherwise disposed of, incumbered, or appropriated), in a strip five miles in width on

each side of said river, to be selected within said territory, &c., and the proceeds are to be applied in the improvement of the navigation of said river from its mouth to the Raccoon Fork. Hence the State is entitled to alternate sections within five miles of the Des Moines River, throughout the whole extent of that river, within the limits of Iowa."

As the board has had no information that this opinion has been rescinded, we believe that you will be informed on the subject, at least within the two weeks prescribed for the continuance of the sale.

Respectfully,

CHARLES CORKERY,
Secretary of Board of Public Works.

CHARLES NEELY, Esq.,
Register of Land Office, Iowa City.

EXHIBIT 10.

On the 8th day of January, 1849, the Representatives in Congress from the State of Iowa addressed and forwarded to Hon. R. J. Walker, Secretary of the Treasury, a letter, of which the following is a copy:

106 CONGRESS, *January* 8, 1849.

SIR: During the last summer we were much surprised to see lands proclaimed for sale by the President of the United States, which had been declared by the General Land Office and considered by the people of Iowa as the property of that State, under the act of 8th of August, 1846, "granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory."

On inquiring of the Commissioner of the General Land Office as to the reasons for this course, he informed us that he had changed his original opinion as to the extent of this grant, and was now inclined to think that it was limited to the Raccoon Fork; but no official promulgation of this opinion has yet been given, except negatively, by proclaiming the lands as above mentioned.

The granting clause in the act of August 8, 1846, is so clear that we are constrained, by a due regard to the interests of the people of the State of Iowa, to ask your consideration of the subject; and we are further encouraged to take this course, as the Commissioner, we are assured, will be pleased to extend to the State the full complement of the grant, if the law, in your opinion, should bear that construction. This act of August, 1846, is found in the acts of the first session 29th Congress, page 115.

The first part of the first section designates the object for which the grant was made, to wit: "There shall be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding the said Territory to improve the navigation of the Des Moines River, from its mouth to the forks of the Raccoon (so called), in said Territory."

The next clause describes the grant and its extent, to wit: "One equal moiety, in alternate sections, of the public lands (remaining unsold, and not otherwise disposed of, incumbered, or appropriated), in a strip five miles in width on each side of the river."

The language is so plain that the extent of the grant is a self-evident proposition, and requires no argument. But the idea is entertained that the improvement governs the extent of the grant. This construction, we beg leave to state, has never obtained. Grants have frequently been made for seats of government, county seats, and the erection of public buildings, but in no case has it been contended that the object of the grant governs the extent of it; otherwise, the act passed by Congress on the same day with that now in consideration (page 140), "to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin Rivers, and to connect the same by a canal in the Territory of Wisconsin," must be construed as running the whole length of the Wisconsin River, also as the limitation of that grant to the Fox River, the lakes through which it passes, and the canal, is not more specific than the terms used to designate the grant for the improvement of the Des Moines River.

107 The reason for this extension of the grant to Iowa above the terminus of the improvement is, moreover, manifest; because, near the mouth of the river that improvement will be very expensive; and there the grant does not attach, because the lands on the Missouri side of the river, below Sullivan's line, are in Missouri, and those on the Iowa side are the property of individuals; and further, most of the lands for some distance up the Des Moines have been sold by the Government; and as the grant is only of the unsold and unappropriated lands in the alternate sections, the only equivalent for those which had been sold that could be given, are the vacant lands far in the interior from the Mississippi; and hence the terms used in the law.

As the terms of the act, then, are so clear and explicit, and as the reasons for the extension of the grant, as provided by that act, are so obvious, we respectfully request in our own behalf, and in behalf of the State and her citizens, who look with that confidence heretofore so fully justified, that you will not withhold the munificence of Congress, and thus cripple this young and rising State in her first great enterprise, and thus involve her in inextricable debt and difficulty. We earnestly request that you will give the necessary instruction for the selection and approval of these lands along the entire route of the Des Moines, as contemplated by law, as fast as the surveys are made and returned, and that the lands which belong to the State, which have been inadvertently offered, and which remain unsold, may be withdrawn from the market, and certified to the State also.

We have the honor to be, with great respect, your obedient servants,

A. C. DODGE.
GEORGE W. JONES.
SHEPAERD LEFFLFR.
WM. THOMPSON.

Hon. R. J. WALKER, *Secretary of the Treasury.*

EXHIBIT 11.

On the 2d day of March, 1849, the said R. J. Walker, Secretary, in answer to said letter of the Iowa Representatives in Congress, addressed and forwarded to them a letter, of which the following is a copy:

TREASURY DEPARTMENT, *March* 2, 1849.

GENTLEMEN: I have the honor to acknowledge the receipt of your communication of 8th January last, and accompanying papers, on the construction of the act of Congress 'granting lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River, in said Territory,' approved 8th August, 1846. I concur with you in the views contained in your communication, and am of the opinion that the grant in question extends, as therein stated, on both sides of the river, from
108 its source to its mouth, but not to lands on the river in the State of Missouri. I have transmitted your communication and accompanying papers, with a copy of this letter, to the Commissioner of the General Land Office.

I have the honor, &c.,

R. J. WALKER,
Secretary of Treasury.

Messrs. A. C. DODGE.
G. W. JONES.
S. LEFFLER.
W. THOMPSON.

EXHIBIT 12.

On the same day (March 2, 1849) the said R. J. Walker, Secretary of Treasury, addressed an official letter to the Commissioner of the General Land Office, of which the following is a copy:

TREASURY DEPARTMENT, *March* 2, 1849.

SIR: For your information and government on the subject to which it refers, I enclose a copy of a letter addressed by me under this date to members in both Houses of Congress from the State of Iowa, with reference to the construction of the act of 8th Augusts, 1846; granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River. I also enclose a letter, to which the within is a reply, and accompanying papers.

Very respectfully,

R. J. WALKER, *Secretary.*

R. M. YOUNG, *Commissioner.*

EXHIBIT 13.

On the first day of June, 1849, R. M. Young, Secretary of the Interior, addressed and forwarded to the register and receiver of the United States land office at Iowa City an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *June* 1, 1849.

REGISTER and RECEIVER, *Iowa City, Iowa:*

GENTLEMEN: The Secretary of the Treasury having decided that the grant of the State of Iowa under the act of the 8th of August, 1846, extended along the Des Moines River to its source, and that it did not stop at the Raccoon Forks, as this office had previously decided, you are

hereby directed to withhold from sale all the lands situated in the odd-numbered sections, within five miles on each side of that river above the Raccoon Forks.

Enclosed I send you a diagram upon which the State selections above that point are colored yellow. I have also to request that you will
109 make out a list showing the sales and locations which have been made within these sections, as it is designed to endeavor to procure some legislative action on the part of Congress confirmatory to them.

The diagram enclosed extends to 83 N., 26 W., being as far as the surveys have progressed in that direction.

I am, very respectfully, your obedient servant,

RICHARD M. YOUNG.

EXHIBIT 14.

In answer to the said letter of R. M. Young, Commissioner, &c., the said register and receiver, on the 16th of June, 1849, addressed to said Commissioner a letter, of which the following is a copy:

LAND OFFICE, IOWA CITY, *June* 16, 1849.

SIR: Your letter of the 1st instant, directing us to withhold from sale the odd sections above the Raccoon Forks of the Des Moines, together with the accompanying diagram, were received yesterday. We will attend to the duties imposed by your letter at the earliest practicable moment, and transmit to your office the abstract showing the sales and locations on the State sections.

We are, very respectfully, your obedient servants,

JESSE BOWEN, *Register.*
EASTON MORRIS, *Receiver.*

Hon. COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

EXHIBIT 15.

Said letter was received by said Commissioner of General Land Office, and is now on file in said office, and contains the following endorsement:

"Acknowledges the receipt of Commissioner's letter of the 1st instant directing the odd sections above the Raccoon Fork to be withheld from sale."

That on the 21st of June, 1849, the register at Iowa City forwarded to Commissioner of the General Land Office the lists called for by and in his letter of June 1, 1849, enclosed in a letter, of which the following is a copy:

REGISTER'S OFFICE, IOWA CITY, IOWA,
June 21, 1849.

SIR: I herewith transmit you a list of the sales and locations of lands on the odd sections within five miles of the Des Moines River, above the Raccoon Forks of said river, in obedience to your instructions of June 1, 1849.

Very respectfully, your obedient servant,

JESSE BOWEN, *Register.*

Hon. COMMISSIONER OF THE GENERAL LAND OFFICE.

110 EXHIBIT 16.

On the 19th of December, 1849, J. Butterfield, Commissioner of the General Land Office, addressed and forwarded to Jesse Williams, then secretary of board of public works, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *December 19th*, 1849.

SIR: A letter has been received at this office from the Hon. A. C. Dodge and the Hon. Geo. W. Jones, inclosing one from you to the former, dated the 30th ult., requesting that you may be furnished with "a list of the Des Moines River grant above the Raccoon Fork." In reply I have to state that said lists have not been furnished, for the reason that the posting of the land warrants in the Iowa City district was not completed on the books of this office until recently. Said list is now in course of preparation, and will be ready for transmission at an early day. In the latter part of your letter you say "the lists heretofore forwarded of land below the fork have been furnished the secretary of state instead of the board, who are the rightful and only agents of the State for said land."

In the absence of evidence showing the right of another to receive confirmed lists of State grants, it is usual to send them to the secretary of state. Such is the case at present in relation to this grant. If, however, you will furnish this office with evidence as to your right, as secretary of the board of public works, to receive said lists, and to correspond with this office in relation thereto, they will hereafter receive the desired direction.

I am, sir, your obedient servant,

J. BUTTERFIELD, *Commissioner*.

JESSE WILLIAMS, Esq., *Iowa City, Iowa*.

EXHIBIT 17.

On the 14th of January, 1850, the Commissioner of the General Land Office made a report to the Secretary of the Interior of the amount of land which had been granted to the several States respectively for the purposes of internal improvement. In this report, after a statement that the amount of lands charged to the State of Iowa is 824,070 acres, occurs the following language:

"This amount, in accordance with the decision of the Secretary of the Treasury of the 2d of March, (1849) eighteen hundred and forty-nine, will be increased by the unadjusted portion of the grant for the improvement of the Des Moines River, situated between the Raccoon Fork and the source of said river, estimated to contain about 900,000 acres."

111 EXHIBIT 18.

On the 13th day of March, 1850, the Commissioner of the General Land Office submitted to the Secretary of the Interior three several lists of land, the first of which had the following heading:

"No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork, &c., under the decision of the Secretary of the Treasury of March 2, 1849."

On the 6th of April, 1850, the Secretary of the Interior, in answer to

the letter of the Commissioner of the General Land Office inclosing said lists, addressed to said Commissioner a letter, of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, April 6, 1850.

SIR: Having considered the question submitted to me connected with the claim of the State of Iowa to select, under the act of August 8, 1846, lands for the improvement of the Des Moines River, I am clearly of the opinion that you cannot recognize the grant as extending above the Raccoon Fork without the aid of an explanatory act of Congress. It is clear to my mind, from the language of the act of August 8, 1846, itself, that it was not the intent of the act to extend it further. My construction is confirmed by the report of the committee and the accompanying papers. If in any report to Congress you have recognized the grant as extending to the source of the river, it will be proper to correct it, that Congress, if they see fit, may extend the grant. The opinion expressed by the late Secretary of the Treasury on the subject is entitled to great respect, but I cannot concur in it, and the law not having been carried into effect by him, his opinion merely expressed is open for reversion.

The lists of selections and other papers submitted with your letter of the 13th ultimo are herewith returned.

As Congress is now in session, and may take action on the subject, it will be proper, in my opinion, to postpone any immediate steps for bringing into market the lands embraced in the State's selections.

I am, sir, very respectfully, your obedient servant,

T. EWING, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

EXHIBIT 19.

On the 19th of September, 1850, J. Butterfield, then Commissioner of the General Land Office, addressed to Millard Fillmore, then President of the United States, the letter of which the following is a copy:

112

GENERAL LAND OFFICE,
September 19, 1850.

His Ex'y M. FILLMORE,
President of the United States:

SIR: I have the honor to acknowledge the receipt of the letter from several members of the Senate and House of Representatives referred by you to this office, asking that the sale of the lands within twenty-five miles of the supposed route of the railroad from Chicago to Mobile be suspended for six months, or until the lands shall have been located, in order that the act may be fully carried out that was recently passed by Congress "granting the right of way and making a grant to the States of Illinois, Mississippi, and Alabama in aid of the construction of that road," and, in accordance with your instructions, beg leave to report:

That, so far as I have been able to examine the question, no authority has been specially conferred upon the President by law to suspend the sales of lands in cases of this character where they have been proclaimed

and offered at public sale. It would appear, however, that he has always been considered as having that authority by implication, from the nature of the duties devolved on him by the whole system of laws making provision for the sale and disposition of the public domain. For the cases, among others, in which this authority has been exercised by the President I refer to a letter from this office to the register at Piqua, Ohio, on the 28th September, 1828, and which is as follows, to wit:

"The President having been advised by the governor of Ohio that the route of the canal from Dayton to Lake Erie, by the Maumee, will probably pursue the course of the Auglaize River from the head of some one of its branches to its mouth, he had directed that the lands lying on the same, and to the extent appropriated by the act passed the 24th of May last, be reserved from sale till further advised. The governor of Ohio has been requested to designate to you that branch of the Auglaize on which the canal will most probably be located.

"With respect, &c.,

"GEO. GRAHAM, *Commissioner.*"

Similar instructions were issued by Commissioner Blake to the land office at Green Bay on the 11th April, 1844, for reserving the lands along the Wisconsin and Fox Rivers, in anticipation of the passage of an act making a grant for the improvement of those rivers; and the reservation then ordered was extended by instructions to those offices of the 8th August, 1846, the day on which the law was passed by Congress making the grant.

In many other cases the same authority has been exercised, but to a less extent. The foregoing, however, being of an early and late date, are deemed sufficient to show that the President has always been regarded as having this authority; and as it has thus been exercised, and in the present case must of necessity be inferred to enable the Executive to secure to the States mentioned and the General Government the benefits conferred by the law, and thus carry out the intention of Congress in passing it, I respectfully recommend:

113 That instructions be issued to the land offices in Illinois to withhold from sale or location of any kind, until further ordered by this office, all the lands belonging to the Government within three full townships, or eighteen miles, on each side of the supposed line of this road; and that the land offices in Mississippi and Alabama be instructed to withhold, in like manner, all the land within four full townships, or twenty-four miles, on each side of said route.

The lands can be suspended from sale much more conveniently by townships than by any other given distance; and the reason for recommending the withholding of a less extent in Illinois than in the other States is that the lands in that State are more sought by actual settlers at this time than in the others, and the general route that the road will pass can be more nearly ascertained.

All of which is most respectfully submitted.

With great respect, your obedient servant,

J. BUTTERFIELD,
Commissioner.

EXHIBIT 20.

On the 15th of February, 1851, the board of public works of the State of Iowa addressed and forwarded to the Commissioner of the General Land Office the letter of which the following is a copy:

OFFICE OF BOARD OF PUBLIC WORKS,
Ottumwa, Iowa, February 15, 1851.

SIR: The undersigned, board of public works of the State of Iowa, have been notified by our honorable Senators in Congress that the honorable Secretary of the Interior has intimated, in advance of a formal decision in relation to the extent of the grant of lands made to the Territory of Iowa by act of Congress approved August 8, 1846, that a difficulty might arise against the construction put upon said act by the State authorities, growing out of the supposed facts that the agents appointed under the Territorial government have not made the selections required by the act, beyond the lands embraced in the diagram furnished by the General Land Office and returned to the same by Jesse Williams, one of said agents.

The present board of public works, as well as their predecessors in office, have ever regarded the selections made by said agents as coextensive with the grant, and as not limited by the diagram alluded to, which only embraced the lands contiguous to the Des Moines River then surveyed. The selection in general terms of the odd sections was supposed to apply to all lands embraced in said grant, as well *as* those surveyed at the time as those thereafter to be surveyed, nor has any formal selection of the lands since surveyed been deemed necessary. Both the former and present board of public works have sold lands not embraced in said diagram, and
114 lying below the mouth of the Raccoon River, and lists of lands have been furnished by the General Land Office, and confirmed by the Secretary of the Treasury, and yet no selections of these lands has been made beyond that of the Territorial agents. To avoid, however, the difficulty suggested by the honorable Secretary of the Interior, but not admitting that a selection of said lands has not been made in accordance with said act, we, the undersigned, hereby notify the Commissioner of the General Land Office that we have selected all lands within five miles of the river of Des Moines that are embraced within the odd sections, from the mouth of said river to the source of the same, not embraced in the selection heretofore made by the Territorial agents, as granted to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called), in said Territory, by the act of Congress of the 8th of August, 1846.

We also request to be furnished, at as early a day as practicable, with a diagram and confirmed list of said lands lying above the Raccoon Forks, and as far up said river as the surveys have been completed.

We are, with high respect, your obedient servants,

WILLIAM PATTERSON,
President.
JESSE WILLIAMS, *Secretary.*
GEORGE GILLASPY,
Treasurer.

Hon. J. BUTTERFIELD,
Commissioner of the General Land Office,
Washington City, D. C.

EXHIBIT 21.

The foregoing letter of the board of public works to the Commissioner of the General Land Office, now on file in the office of said Commissioner, contains the following endorsement:

SENATE, *March 10th*, 1851.

A. C. DODGE: Enclosed communication from the board of internal improvement of the State of Iowa; reselected the odd-numbered sections throughout the whole extent of the grant of land made to the State of Iowa by act of 8th August, 1846.

EXHIBIT 22.

On the 22d of February, 1851, the president and secretary of the said board of public works sent to the Hon. A. H. H. Stuart, Secretary of the Interior, a communication by telegraph, of which the following is a copy:

KEOKUK, *February 22d*, 1851.

To Hon. ALEX. STUART:

As agents of the State of Iowa we demand all the odd sections of
115 land within five miles of the Des Moines River above Raccoon Forks, for improvements of said river, as provided by the act of Congress upon that subject.

WM. PATTERSON,
President Board of Public Works.
J. WILLIAMS, *Secretary.*

EXHIBIT 23.

On the 14th of April, 1850, the Senators and Representatives in Congress from Iowa protested against the decision indicated by the said letter of Ewing, Secretary of the Interior, to Commissioner of General Land Office, and appealed therefrom to the President. He referred the question to the Attorney-General (Johnson), who, on the 19th of July, 1850, made his report, giving it fully as his opinion that by the terms of the grant itself it extended along the Des Moines River up to its very source.

Previous to the promulgation of this opinion, President Taylor died, and a new Cabinet was formed before any action was had upon the decision of Attorney-General Johnson. Instead of giving effect to the opinion of Mr. Johnson, the question was submitted anew to the Attorney-General, Mr. Crittenden, who, on the 30th of June, 1851, gave it as his opinion that the grant did not extend above the Raccoon Fork.

The opinions in full here referred to are to be put in evidence, also the letters.

EXHIBIT 24.

The Secretary of the Interior, on the 26th of July, 1851, addressed a letter to the Commissioner of the General Land Office (enclosing the opinion of Attorney-General Crittenden), of which the following is a copy:

DEPARTMENT OF THE INTERIOR,
Washington, July 26, 1851.

SIR: Enclosed I send you a copy of an opinion of the Attorney-General, dated the 30th ultimo, in which I concur, relative to the claim of the State of Iowa, under the act of 8th August, 1846, to alternate sections of land along the Des Moines River above Raccoon Forks, together with all the papers in the case.

The order of Mr. Secretary Ewing of the 6th April, 1850, for the withholding of these lands from market until the close of the then session of Congress may be continued to the end of the approaching session,
116 in order to give the State the opportunity of petitioning for an extension of the grant by law.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

EXHIBIT 25.

After the date of this letter Secretary Stuart consented to bring the whole matter before the President and Cabinet, who arrived at the decision indicated in the following letter of Secretary Stuart to the Commissioner of General Land Office, of date of October 29, 1851:

DEPARTMENT OF THE INTERIOR,
Washington, October 29, 1851.

SIR: I herewith return all the papers in the Des Moines case, which were recalled from your office about the first of the present month.

I have considered and carefully reviewed my decision of the 26th July last, and in doing so find that no decision which I can make will be final, as the question involved partakes more of a judicial than an executive character, which must ultimately be determined by the judicial tribunals of the country, and although my own opinion on the true construction of the grant is unchanged, yet in view of the great conflict of opinion among the executive officers of the Government, and also in view of the opinions of several eminent jurists which have been presented to me in favor of the construction contended for by the State, I am willing to recognize the claim of the State, and to approve the selections without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary. You will please, therefore, as soon as may be practicable, submit for my approval such lists as may have been prepared, and proceed to report for like approval lists of the alternate sections claimed by the State of Iowa above the Raccoon Forks, as far as the surveys have progressed or may hereafter be completed and returned.

Very respectfully, &c., &c.,

A. H. H. STUART, *Secretary.*

The COMMISSIONER OF THE GENERAL LAND OFFICE.

EXHIBIT 26.

On the following day three lists of lands were prepared in the General

Land Office, the headings of which will show their respective purposes, and are as follows:

List No. 1, showing the tracts falling within the limits of the Des Moines grant above the Raccoon Fork of the Des Moines River,
117 so far as the surveys have extended, under the decision of the Secretary of the Treasury of 2d of March, 1849, that such grant extended to the north boundary of the State.

List No. 2, showing tracts disposed of within those limits in the interval between the date of one of the previous orders limiting the grant and one of those extending above the fork.

List No. 3, showing the vacant lands subject to the claim of the State.

The third of these lists was presented to the Secretary of the Interior for his approval, to which he appended the following explanatory statement:

DEPARTMENT OF THE INTERIOR,
October 30, 1851.

The selections embraced in the within list (No. 3) are hereby approved, in accordance with the views expressed in my letter of the 29th instant to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the Land Office by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of prior to the receipt by the local land officers of the letter of the Commissioner of the General Land Office communicating the decision of Mr. Secretary Walker to the effect that the grant extended above the Raccoon Fork.

ALEX. H. H. STUART,
Secretary.

EXHIBIT 27.

On the 1st of November, 1851, J. Butterfield, Commissioner of General Land Office, addressed and sent to V. P. Van Antwerp a letter, of which the following is a copy:

GENERAL LAND OFFICE, *November* 1, 1851.

To V. P. VAN ANTWERP, Esq., *Present:*

SIR: In compliance with the request contained in your letter of this date to be furnished with lists, approved by the Secretary of the Interior, of the lands granted to the State of Iowa by the act of Congress of the 8th of August, 1846, or such portion of them as can now be prepared, I herewith inclose certified copies, numbered 1, 2, and 3, of said lists.

No. 1 shows the odd-numbered sections and parts of sections within the limits of the Des Moines River grant above the Raccoon Fork, in the townships embraced in said list.

118 No. 2 shows the tracts sold within the above-mentioned sections and parts of sections between the 24th of August, 1848, and the 16th of June, 1849, the period during which the grant was supposed to be limited on the north by the Raccoon Fork.

No. 3 shows the residuary or vacant tracts, after deducting from list

No. 1 the sales contained in list No. 2, and is an exhibit, therefore, of the lands accruing to the State in virtue of the grant not interfered with by previous sales.

You will perceive that list No. 3 only has been approved by the Secretary.

Very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

EXHIBIT 28.

On the 16th of March, 1852, the Commissioner of the General Land Office addressed and forwarded to the register of U. S. land office at Dubuque, Iowa, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *March* 16, 1852.

REGISTER, *Dubuque, Iowa:*

SIR: I herewith transmit an exemplified copy of a list showing the vacant lands in the odd-numbered sections above the Raccoon Forks and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under act of 8th August, 1846, as construed by the Secretary of the Treasury in his letter of 2d of March, 1849, and the Secretary of the Interior of 29th of October, 1851, approved by the Secretary of the Interior on the 10th inst., a copy of which has been sent to George Gillaspy, esq., register, &c.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

EXHIBIT 29.

On the same day (March 16) the Commissioner of the General Land Office indited and forwarded to George Gillaspy, register of Des Moines River improvement, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *March* 16, 1852.

SIR: In compliance with the request made in your letter of 5th February last, I herewith transmit an exemplified copy of a list showing the vacant lands in the odd-numbered sections above the Raccoon Forks and within five miles of the Des Moines River, so far as the surveys
119 have progressed, falling to the State of Iowa under the act of 8th August, 1846, as construed by the Secretary of the Treasury in his letter of 2d March, 1849, and the Secretary of the Interior of 29th October, 1851, approved by the Secretary of the Interior on the 10th inst.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

GEO. GILLASPY, Esq.,
Register, &c., Ottumwa, Iowa.

EXHIBIT 30.

On the 20th of April, 1852, Butterfield, Commissioner of the General Land Office, wrote and forwarded to register of U. S. land office at Iowa City an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *April* 20, 1852.

REGISTER, *Iowa City, Iowa:*

SIR: I herewith transmit a list showing the vacant lands in the Iowa City district in the odd-numbered sections above the Raccoon Forks and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act 8th August, 1846, as construed by the Secretary of the Treasury in his letter 2d March, 1849, and of the Secretary of the Interior of 29th October, 1851, which have not heretofore been approved. Complete lists, approved by the Secretary of the Interior 10th March, were transmitted to the State register and to the register of land office at Dubuque on the 16th ultimo.

I am, very respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

EXHIBIT 32.

On the 2d December, 1853, the Acting Commissioner of the General Land Office addressed and forwarded to George Gillaspy, register of the State land office, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *December* 2, 1853.

SIR: Assisted by the information contained in your letter of the 7th ult., I have ascertained that there are a number of tracts of land selected by the State of Iowa under the 8th section of the act of 4th September, 1841, situated within the limits of the Des Moines River grant, under which (the grant) the State is entitled to them, and you are advised that when the grant is adjusted, which will be in a short time, so far as the surveys have progressed, the approval of the selections so situated will be rescinded and the State authorized to select others in lieu thereof.

120 You are again advised that the books and files of this office show no military reservation on section 19, 89 N., 28 W., and upon inquiry at the War Department it appears that there has never been any order to reserve it. It will therefore be certified to the State under the Des Moines grant.

I am, very respectfully, your obedient servant,

CHARLES S. FRAILEY,
Acting Commissioner.

GEO. GILLASPY, Esq.,
Ottumwa, Iowa.

EXHIBIT 33.

On the 13th of July, 1848, there were approved to the State of Iowa, by R. J. Walker, Secretary of the Treasury, under said grant of August, 1846, lands lying below the Raccoon Fork to the amount of 321,028.03

acres, 53,473.17 acres of which were by the State conveyed to the Des Moines Navigation and Railroad Company, the balance thereof having been disposed of by the State and its board of public works prior to June 9, 1854.

The following amounts of land were at different times approved and certified to the State of Iowa under this grant, all lying above the Raccoon Fork:

October 30th, 1851	81, 707. 93	acres.
March 10th, 1852	143, 908. 37	"
December 17th, 1853	33, 142. 43	"
December 30th, 1853	12, 813. 51	"
	271, 572. 24	

212,636.31 acres of which were by the State conveyed to the Des Moines Navigation and Railroad Company, the balance, 58,932.93 acres, having been sold by State and its board of public works prior to the contract between the State and said company, June 9, 1854.

Among the lands so certified and approved were the lands then surveyed above the Raccoon Fork of the river, but not the lands in controversy, which were not then surveyed.

EXHIBIT 34.

The following is the heading of the list which was approved
121 by the Secretary of the Interior on the 17th December, 1853, together with the terms of approval; a similar heading and approval was appended to the list approved on the 30th of the same month:

"A list showing the vacant lands in the odd-numbered sections above the Raccoon Fork and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of the 2d of March, 1849, and of the Secretary of the Interior of the 29th October, 1851, which have not heretofore been approved."

Which list was approved in these words:

DEPARTMENT OF THE INTERIOR,
December 17, 1853.

The selections in the within list are hereby approved to the State of Iowa, under the act of the 8th of August, 1846, without prejudice to the rights, if any there be, of other parties.

R. McCLELLAND, *Secretary.*

Included only surveyed lands, and not the lands in controversy, which were not then surveyed.

EXHIBIT 36.

The certificates issued by the State, by its regular and authorized officers,

from time to time, to the Des Moines Navigation & R. R. Co., as the work on the river progressed, were in form and substance as follows:

OFFICE REGISTER OF THE
DES MOINES RIVER IMPROVEMENT,
Ottumwa, May 14, 1855.

I certify that the following lands were sold by me on this day of to the Des Moines Navigation and Railroad Company, in pursuance of the contracts and agreements with the said company for the construction of said Des Moines River improvement, to wit:

(Here follows a long list of lands, set forth specifically by section, township, and range, together with the number of acres in each tract respectively.)

(Signed) GEORGE GILLASPY,
Register, &c.

EXHIBIT 37.

On the 6th of January, 1854, John Wilson, Commissioner of the
122 General Land Office, addressed to George Gillaspy, esq., register of the State land office, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *January 6th*, 1854.

SIR: Herewith I enclose a certified copy of a list of lands falling within the Des Moines River grant under act of 8th August, 1846, selected by the State of Iowa, under the 8th section of the act of the 4th September, 1841, on the 20th July, 1850, and erroneously approved the 20th February, 1851, previous to the adjustment of the grant, and before it was known that they belonged to the State under the Des Moines River grant, now approved by the Secretary of the Interior under the act of 8th August, 1846. The quantity of land embraced by the list is twelve thousand eight hundred and thirteen acres and fifty one-hundredths of an acre (12,813.51).

Thos. H. Benton, jr., esq., superintendent of public instruction, has been advised that the State is authorized to select an equal quantity under the act of 1841 in lieu thereof.

I am, very respectfully, your obedient servant,
JOHN WILSON, *Commissioner.*

GEORGE GILLASPY,
Register State Land Office, Ottumwa, Iowa.

EXHIBIT 38.

On the 6th of January, 1854, the Commissioner of the General Land Office wrote to the superintendent of public instruction of the State of Iowa as follows:

GENERAL LAND OFFICE, *January 6th*, 1854.

SIR: Herewith I enclose a copy of a list of lands falling to the State of Iowa under the act of 8th August, 1846, selected by the State under the 8th section of the act of 4th September, 1841, and approved before the

grant for the improvement of the Des Moines River was adjusted, as far as the townships embraced by the lists which was approved by the Secretary of the Interior on the 30th ultimo. The quantity of land thus approved under the act of 8th of August, 1846, is twelve thousand eight hundred and thirteen acres and fifty-one hundredths of an acre (12,813.51).

These lands were selected on the 20th of July, 1850, and embraced by lists Nos. 49 to 54, inclusive, and in lieu thereof the State is entitled to select an equal quantity elsewhere.

Be pleased to acknowledge the receipt of this communication.

I am, very respectfully, your obedient servant,

JOHN WILSON, *Commissioner.*

THOMAS H. BENTON, Jr., Esq.,
Superintendent of Public Instruction, Iowa City, Iowa.

123 EXHIBIT 39.

On the 6th of January, 1854, the Commissioner of the General Land Office addressed and forwarded to Geo. Gillaspy, register of the State land office, an official letter, of which the following is a copy:

GENERAL LAND OFFICE, *January 6th*, 1854.

SIR: Herewith I enclose a certified copy of a list of tracts falling to the State of Iowa under the act of the 8th August, 1846, above the Raccoon Forks, so called, so far as the surveys have progressed and not heretofore approved, approved by the Secretary of the Interior on the 17th ultimo, amounting in the aggregate to thirty-three thousand one hundred and forty-two acres and forty-three hundredths of an acre (33,142.43).

I am, very respectfully, your obedient servant,

JOHN WILSON, *Commissioner.*

GEO. GILLASPY, Esq.,
Register of State Land Office, Ottumwa, Iowa.

The lands in suit were not yet surveyed, and are not in this list.

EXHIBIT 40.

On the 7th of January, 1854, the Commissioner of the General Land Office addressed and forwarded to the register of the State land office at Des Moines, Iowa, the letter of which the following is a copy:

GENERAL LAND OFFICE, *January 7th*, 1854.

SIR: I enclose a copy of a list of the vacant lands in the odd-numbered sections above the Raccoon Forks, and within five miles of the Des Moines River, so far as the surveys have progressed, falling to the State of Iowa under the act of 8th August, 1846, as construed by the Secretary of the Treasury in his letter of 2d March, 1849, and of the Secretary of the Interior of the 29th October, 1851, approved by the Secretary of the Interior on the 17th ultimo.

The quantity embraced by the list is 33,142.43 acres.

You will please have them entered upon your tract and plat books.

I also enclose a copy of a list of lands falling within the Des Moines River grant, under act of 8th August, 1846, selected by the State under the 8th section of the act of 4th September, 1841, on the 20th July, 1850,

and erroneously approved on the 20th February, 1851, previous to the adjustment of the grant for those townships, and before it was known that they belonged to the State under the Des Moines River grant.

This list was approved on the 30th ult., and embraced 12,813.51 acres.

You will please note these selections upon your plat and tract
124 books, as approved under act of 8th August, 1846, and cancel the approval of the same as selections under the act of 4th September, 1841.

I am, very respectfully, your obedient servant,

JOHN WILSON, *Commissioner.*

REGISTER OF THE LAND OFFICE,
Fort Des Moines, Iowa.

EXHIBIT 41.

On the 25th of January, 1855, the general assembly of the State of Iowa passed an act entitled "An act for the relief of settlers on certain river lands," the preamble to which and the first and eighth sections whereof are as follows:

An act for the relief of settlers on certain river lands.

Whereas a large number of persons have contracted with the proper school officers to purchase lands as school lands, being part of the 500,000 grant, and have paid part of the purchase-money down, and have entered upon the said land and made valuable improvements upon the same; and

Whereas the State of Iowa have located part of the grant for the improvement of the Des Moines River upon said lands thus purchased and settled upon; and

Whereas doubts have arisen as to the legality of said location; therefore,

SEC. 1 Be it enacted by the general assembly of the State of Iowa, That the commissioner and register of the Des Moines River improvement be required to represent the facts stated in the foregoing preamble to the Des Moines Navigation and Railroad Company, and enter into negotiation with said company for the sale of said lands described in said preamble, to the persons who have contracted with the several school fund commissioners for the same, at one dollar and twenty-five cents per acre.

That all moneys received for land sold under the provisions of this act shall be paid over to the proper officers of the Des Moines Navigation and Railroad Company.

EXHIBIT 43.

On the 12th of May, 1856, the Commissioner of the General Land Office addressed to Hon. George W. Jones a letter, of which the following is a copy:

GENERAL LAND OFFICE, *May* 12, 1856.

Hon. GEO. W. JONES, *U. S. Senate:*

SIR: In reply to the inquiries of your letter received this morning, I have to state, according to a hasty estimate at this office—

1st. That the lands along the Illinois Central Railroad were offered between the years 1816 and 1844, embracing a period of 28 years,
125 assuming 14 years as the average, and adding 12, the term elapsed since 1844, we have the average terms the lands have been in market 26 years, hence the price under the graduation act would be 25 cents per acre.

2d. See inclosed printed statement in Commissioner's annual report of November 30, 1854, pages 17 and 18, which shows as follows:

"Sold within six-mile limits, 765,690 acres for $1,936,075; average price $2.54 per acre. Sold within fifteen miles, including the above, 2,377,994 acres for $3,989,210; average price, $1.68 per acre."

3d. The inclosed statement marked "A" shows the estimated length of the railroads and the amount which would accrue to the State under the bill.

I am, respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

A.

Iowa railroad grants.

Routes.	Estimated miles.	Granted.
Dubuque via Fort Dodge to Iowa City	295	1,132,800
Lyons City via Mauquoketa due west to Missouri River	325	1,248,000
Davenport via Iowa City, Fort Des Moines to Council Bluffs	290	1,113,600
Burlington west to mouth of Platte River	255	979,200
Total	1,165	4,473,600
Deduct for the Des Moines River grant, which crosses 4 times 10 x 4	40	153,600
Leaves	1,125	4,320,000

quantity to which the State would be entitled if to be had within the alternate sections, within fifteen miles of the road.

Whole surface of Iowa is	32,584,960	acres.
Estimated vacant 30th September, 1855	13,874,163	"
Amount that would be liable for selection if the lands were all vacant, 1,125 x 15 x 640 acres	10,800,000	"
Therefore, as 32 : 13 :: 10,800,000—	4,387,500	"

The estimated amount vacant and liable to selection for the grant within the prescribed limits and equal to the quantity granted. But the deficiency on one route cannot be made up on another; it is not possible, therefore, that the lands will hold out.

EXHIBIT 46.

Whereas the Des Moines Navigation and Railroad Company have heretofore claimed, and do now claim, to have entered into certain contracts

with the State of Iowa, by its officers and agents, concerning the improvement of the Des Moines River, in the State of Iowa; and

Whereas disagreements and misunderstandings have arisen, and
126 do now exist, between the State of Iowa and said company, and it being conceived to be the interest of all parties concerned to have said matters and all matters and things between the company and the State of Iowa settled and adjusted; now therefore be it

Resolved by the general assembly of the State of Iowa, That for the purpose of such settlement, and for that purpose only, the following propositions are made by that State to said company: That the said company shall execute to the State of Iowa full releases and discharges of all contracts, agreements, and claims with or against the State, including rights to water rents which may have heretofore or do now exist, and all claims of all kinds against the State of Iowa and the lands connected with the Des Moines River improvement, excepting such as are hereby by the State secured to the said company; and also surrender to said State the dredge-boat and its appurtenances belonging to said improvement; and the State of Iowa shall by its proper officer certify and convey to the said company all lands granted by an act of Congress, approved August 8, 1846, to the then Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa by its officers and agents prior to the 23d day of December, 1853, under said grant; and said company, or its assignees, shall have right to all of said lands as herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatsoever, with full power to settle all errors, false locations, omissions, or claims in reference to the same, and all pay or compensation therefor by the General Government, but at the costs and charges of said company, and the State to hold all the balance of said lands, and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company; and it is understood that among the lands excepted and not granted by the State to said company are 25,487.$\frac{87}{100}$ acres, lying immediately above Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa.

And it is further agreed that said company release and convey to the State of Iowa or its representative all materials of every kind and description prepared for or intended for the construction of locks or dams in said improvement wheresoever the same may be; and the State shall take the existing contracts, but no other liabilities of any name or nature, except as herein provided, for constructing or repairing the works on said improvement at Keosauqua, Bentonsport, Plymouth, and Croton, and no other or different, with all liabilities and advantages arising upon said contract, and percentage retained thereon, excepting that the company shall pay all estimates for work done or material prepared up to this date, beyond the percentage retained from the contractors under their agreements; and the said company shall be discharged from all liability for the claims of the officers of the State for services or salaries.

The said company hereby agree to pay the State the sum of twenty
127 thousand dollars, which sum shall be paid to the order of the com-

missioner of the Des Moines River improvement (as fast as he may require the same, to liquidate existing liabilities against said Des Moines River improvement) on thirty days' notice given to said company at their office in the city of New York; and any bonds or certificates of indebtedness against said improvement not exceeding in amount the sum of $11,000, which are now due and unpaid, are to be received in part payment of said sum of twenty thousand dollars; provided that no liabilities assumed by the State in this contract shall be a charge against the State in her sovereign capacity; but all such liabilities, if any, shall be chargeable upon and payable out of the remaining lands belonging to the Des Moines River grant; and provided, also, that if Congress shall permit a diversion of the lands of said Des Moines River grant, or the title thereto shall become vested in the State, so as to become subject to grant, the said remaining lands, after the payment of all liabilities as aforesaid against said improvement, and the completion of such locks and dams on the Des Moines River as the legislature shall direct, shall be granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, to aid in the construction of a railroad up and along the valley of the Des Moines River, upon such terms and in such manner as the legislature may provide, one-fourth of which said lands shall be applied by said company to aid in the construction of said road above the city of Des Moines; and provided further, that if the said Des Moines Navigation and Railroad Company shall ratify and accept these propositions for a contract by filing a written acceptance thereof in the office of the secretary of state within sixty days from the passage of this joint resolution, then this contract shall be in force and bind both of the parties thereto.

The Des Moines Navigation and Railroad Company ratified and accepted the proposition embodied in the joint resolution within the time and in the manner therein specified. The company paid to the State the sum of $20,000 in cash, and released and conveyed to the State the dredgeboat and materials in said resolution mentioned, which were of the cash value of more than $100,000, and in all respects, on its part, fully complied with all the terms of settlement in said joint resolution provided.

EXHIBIT 47.

Thereupon the governor of the State of Iowa addressed to the President of the United States a certificate, as follows:

EXECUTIVE CHAMBER, IOWA,
Des Moines, April 28, 1858.

To His Excellency JAMES BUCHANAN,
President of the United States:

I, Ralph P. Lowe, governor of the State of Iowa, as required by
128 act of Congress, approved August 8, 1846, "granting certain lands of the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory," do hereby certify that there has been expended from time to time prior to the date hereof, on the improvement of said river, as the work has progressed, and the money has been required under certain contracts made by the State of Iowa, with the Des Moines Navigation and Railroad Company, the sum of three hundred and

thirty-two thousand six hundred and thirty-four $\frac{4}{100}$ dollars (332,634.04), and in consideration of said expenditures on said improvement, and in pursuance of the provisions of the act of Congress, approved as aforesaid, there will be conveyed to said Des Moines Navigation and Railroad Company two hundred and sixty-six thousand one hundred and seven $\frac{23}{100}$ acres (266,107$\frac{23}{100}$ acres) of the land belonging to said grant, and which have been certified and approved to the State of Iowa, under said act, for the prosecution of the improvement of said river Des Moines.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed, together with my signature.

[L. S.] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State.

EXHIBIT 48.

And afterwards the said State, on the 3d of May, 1858, executed and delivered to the Des Moines Navigation and Railroad Company a certain deed or patent, under the seal of the State, as follows:

This indenture, made this third day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation and Railroad Company, parties of the second part, witnesseth:

That the said party of the first part, for and in consideration of one dollar, paid by the parties of the second part, and in pursuance of the contracts and agreements between the State of Iowa and the said Des Moines Navigation and Railroad Company for the improvement of the Des Moines River, does hereby sell, grant, bargain, and convey to the said Des Moines Navigation and Railroad Company, the following referred to and described lands, to wit:

(Here follows a description of several thousand acres of land, set forth specifically by sections, townships, and range, but does not embrace lands in controversy.)

To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining unto the Des Moines Navigation and Railroad Company, their successors and assigns, forever; in fee-simple.

129 In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand at the city of Des Moines, the day and year first above written, and of the State of Iowa the twelfth year.

THE GREAT SEAL OF THE STATE OF IOWA.

(Signed) RALPH P. LOWE.

By the governor:

(Signed) ELIJAH SELLS,
Secretary of State.

This is to certify that the foregoing deed was received from the governor June 10, 1858, and recorded in Des Moines River records, book A, pages 41, 42, 43, and 44, June 18, 1858.

(Signed) T. S. PARVIN,
Register of the State Land Office,
By D. S. WARREN, *Deputy.*

EXHIBIT 49.

On the same day the said State executed and delivered to said company several other similar patents, under the seal of the State, and the aggregate amount of the land described in and conveyed by all of said patents was 266,107.23 acres, of which about 58,830 acres were below, and the remainder above Raccoon Fork.

EXHIBIT 50.

On the 18th of May, 1858, said State also executed and delivered to the said company a deed and a patent under the seal of the said State, of which the following is a copy:

This indenture, made this 18th day of May, one thousand eight hundred and fifty-eight, by and between the State of Iowa, party of the first part, and the Des Moines Navigation & Railroad Company, parties of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar paid by the parties of the second part, and in pursuance of a joint resolution of the general assembly of the State of Iowa, approved the 22d day of March, 1858, does hereby sell, grant, bargain, and convey to the Des Moines Navigation and Railroad Company the following described lands, to wit: All lands granted by an act of Congress, approved August 8, 1846, to the Territory of Iowa, to aid in the improvement of the Des Moines River, which have been approved and certified to the State of Iowa by the General Government, saving and excepting all lands sold or conveyed, or agreed to be sold or conveyed, by the State of Iowa, by its officers and agents, prior to the 23d day
130 of December, 1853, under said grant, and said company, or its assigns, shall have right to all of said lands so herein granted to them as fully as the State of Iowa could have under or by virtue of said grant, or in any manner whatever, with full power to settle all errors, false locations, ommissions, or claims in reference to the same, and all pay or compensation therefor, by the General Government, but at the costs and charges of said company; and the State to hold all the balance of said lands, and all rights, powers, and privileges under and by virtue of said grant, entirely released from any claim by or through said company. And it is understood that among the lands excepted and not granted by the State to said company, are 25,488.87 acres lying immediately above the Raccoon Fork, supposed to have been sold by the General Government, but claimed by the State of Iowa.

To have and to hold the above-described lands, and each and every parcel thereof, with all the rights, privileges, immunities, and appurtenances of whatever nature thereunto belonging or appertaining, unto the

Des Moines Navigation and Railroad Company, their successors and assigns, forever, in fee-simple.

In testimony whereof I, Ralph P. Lowe, governor of the State of Iowa, have caused the great seal of the State of Iowa to be hereunto affixed.

Given under my hand, at the city of Des Moines, the day and year first above written, and of the State of Iowa the twelfth year.

[L. S] RALPH P. LOWE.

By the governor:

ELIJAH SELLS,
Secretary of State,
By JNO. M. DAVIS, *Deputy.*

This is to certify that the foregoing deed was received from the governor June 10, 1858, and recorded in Des Moines River records, book A, pages 45 and 46, June 18, 1858.

T. S. PARVIN,
Register of the State Land Office,
D. S. WARREN, *Deputy.*

EXHIBIT 51.

On the 3d day of March, 1857, the Commissioner of the General Land Office addressed the following official communication to Hon. Bernhart Henn:

GENERAL LAND OFFICE, *March* 3, 1857.

SIR: In reply to your communication of the 28th ultimo, requesting a statement of the quantity of land which will enure to the Dubuque & Pacific Railroad Company in Iowa, under the act of Congress, approved 15th May, 1856, subject to the terms and conditions in said act and to the acts of the legislative assembly of said State, the following estimates carefully prepared at this office are communicated:

131 1. The length of the Dubuque & Pacific road and branch to Tete des Mortes, measured on the official map of the route, is..... 331½ miles.

Which, at six sections, or 3,840 acres per mile, would make..... 1,272,960 acres.

Deduct for water..... 21,920 "

Leaves..... 1,251,040 "

To which the company would be entitled if found vacant in the odd-numbered sections within fifteen miles of the road.

2. The estimated quantity of vacant in the odd-numbered sections within fifteen miles of the road and liable for selection (all situated in Iowa), is as follows:

In the Sioux City district.....	880,200	acres.
In the Fort Dodge "	415,360	"
In the Dubuque "	11,045	"
	1,306,605	

Which is exclusive of the quantity of 151,800 acres claimed for the Des Moines River grant above the Raccoon Fork, within the fifteen-miles limit of the railroad grant, and not yet decided.

It appears, therefore, from the above, that the Dubuque & Pacific Railroad Company will obtain their full complement of land under the grant, estimated to cover 1,251,040 acres.

I am, very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. BERNHERT HENN,
Agent of the State of Iowa and the Railroad Companies,
Washington, D. C.

EXHIBIT 52.

That the general assembly of the State of Iowa passed an act which took effect April 14, 1858, of which the following is a copy:

An act appointing a commissioner to procure the lands granted for improving the navigation of the Des Moines River, to be certified to the State.

SECTION 1. Be it enacted by the general assemby of the State of Iowa, That Chas. Mason, of Des Moines County, is hereby appointed a commissioner, whose duty it shall be to do all acts in behalf of the State which may be necessary to procure the lands belonging to the grant made to the then Territory of Iowa, by an act of Congress approved August 8th, 1846, for the improvement of the navigation of the Des Moines River in said Territory, to be certified and set apart to said State by the proper Department of the General Government, and any act or agreement as to
132 the amount of land to which the State may be entitled under said act of Congress, made or concluded by said agent, is hereby ratified and confirmed.

SECTION 2. That the State of Iowa shall not be liable in any manner for any damages growing out of any act or agreement of said agent hereby appointed, nor shall the State be held liable for any expense in any manner for the salary or per diem of said agent.

SECTION 3. This act to take effect and be in force immediately after its publication in the Iowa State Journal and Iowa Weekly Citizen.

Approved March 22d, 1858.

EXHIBIT 53.

That as agent or commissioner of the State under the said act, the said Charles Mason, on the 30th of April, 1858, addressed to the Secretary of the Interior a communication, of which the following is a copy:

WASHINGTON, *April 30th*, 1858.

SIR: In our recent conversation relative to the settlement of the controversy in regard to the extent of the Des Moines River grant, you expressed a readiness to abide by the proposition of your immediate pre-

decessor, founded upon the opinion of the late Attorney-General, dated May 29th, 1856. That proposition was that the decision of Mr. Secretary Stuart of 29th October, 1851, founded on that of Mr. Walker's of March 2, 1849, should be adopted as final and conclusive. As agent for the State of Iowa, with full power over this subject, I am willing to accept this proposition thus far. But the late Attorney-General has arrived at a conclusion that this rule will confine the grant to the present limits of the State of Iowa, and one branch of the proposition presented by your predecessor has accordingly been, that the State should relinquish all claims to lands north of her present boundaries. Fully satisfied that a fair interpretation of the decisions of Messrs. Walker and Stuart would lead to no such conclusion, and that the opinion of the late Attorney-General in this respect was palpably erroneous, mainly in consequence of mistakes in regard to matters of fact, I desire this branch of the subject to remain open, and that I be permitted to show the truth of what I now state, in such manner as you may think reasonable and proper.

The State of Iowa desires protection in all her just claims, and she will ask for nothing more. If upon a proper examination it be found that a fair construction of the decision of Mr. Stuart, founded on that of Mr. Walker's, will limit the grant to the present boundaries of the State, I will at once, on the part of the State, relinquish all claim to such lands as lie in Minnesota, and thus terminate this long controversy.

Yours, very respectfully,

CHAS. MASON,
Agent and Attorney for Iowa.

Hon. JACOB THOMPSON,
Secretary of the Interior.

133 EXHIBIT 54.

In answer to this letter, the Secretary of the Interior, on the 8th of May, 1858, replied as follows:

DEPARTMENT OF THE INTERIOR,
Washington, May 8th, 1858.

Hon. CHARLES MASON,
Agent of the State of Iowa:

SIR: I have to acknowledge the receipt of your communication of the 30th ultimo, relative to the settlement of the controversy as to the extent of the Des Moines River grant.

The decision of my immediate predecessor, of the 9th June, 1856, I regard as a proposition made to the State of Iowa for a final adjustment, and your present communication is not an acceptance of the proposition on the part of the State. When it is considered that nearly two years have elapsed and no formal acceptance has in the mean time been presented here, if this be the only communication you have to make, I feel authorized to regard your letter, now before me, as an authoritative rejection of that proposition.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

EXHIBIT 55.

On the 22d of March, 1858, the general assembly of the State of Iowa passed an act which took effect by publication April 7, 1858, the first section of which is as follows:

CHAPTER 99.—*Land grant to the Des Moines Valley R. R.*

An act disposing of the grant of land made by an act of Congress, granting land to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River.

SECTION 1. Be it enacted by the general assembly of the State of Iowa, That all the lands granted to the then Territory of Iowa, by an act of Congress, approved August eighth, eighteen hundred and forty-six, entitled "An act granting lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines River, in said Territory," and all lands and compensation which may be given in extension or in lieu of any portion thereof by the General Government, and also all stone, timber, and other material turned over to the State by the Des Moines Navigation and Railroad Company in settlement with the State of Iowa, be, and the same are hereby, disposed of and granted to the Keokuk, Fort Des Moines and Minnesota Railroad Company, a body corporate created and existing under the laws of the State of Iowa, to aid in the construction of a railroad from the city of Keokuk, at the mouth of the Des Moines River, up and along the valley of said river by way of the
134 city of Des Moines, to the northern line of the State, in the direction of the southern bend of the Minnesota or St. Peter's River, excepting all the lands belonging to said grant heretofore sold by the State of Iowa, or which may hereafter be conveyed to the Des Moines Navigation and Railroad Company by virtue of a settlement now pending between the State and said company, and also so much of the said timber, stone, and other materials as may be used in the completion of the locks and dams at Croton, Plymouth, Bentonsport, and Keosauqua, this grant to become operative so soon as Congress shall assent to or permit a diversion, or the title thereto shall become vested in the State so as to be subject to grant.

EXHIBIT 56.

In 1859, a petition from citizens of Iowa was addressed the President, asking that certain specified townships of the lands above the Raccoon Fork, which had been so approved to the State under the act of Aug. 8, 1846, should be brought into market. In reply thereto, the Commissioner of the Land Office addressed to Senator Jones, of Iowa, the following letter:

GENERAL LAND OFFICE, *February* 17, 1859.

SIR: I have the honor to acknowledge the receipt of the petition referred by you to the Department, on the 12th inst., of sundry citizens of Fort Dodge district, Iowa, asking that certain lands in said district may be brought into market, and in regard to the matter to state that the lands

referred to by the memorialists are withheld from market in view of the grant to Iowa, by act of August 8, 1846, to aid in the improvement of the Des Moines River.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. G. W. JONES, *U. S. Senate.*

EXHIBIT 57.

At the December term of the Supreme Court of the United States, in the year 1859, and on or about the 9th day of April, 1860, a decision was made by said court in the case of Litchfield vs. The Dubuque and Pacific Railroad Company, which is reported in 23 Howard's Rept., 66.

When such decision became known at the General Land Office, the Commissioner, on the 18th of May, 1860, issued and sent the registers and receivers of the U. S. land office at Des Moines and Fort Dodge, Iowa, a printed notice, of which the following is a copy:

135 *No. 661.—Notice respecting certain lands in the State of Iowa.*

Notice is hereby given that the lands along the Des Moines River, in Iowa, within the claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Forks of said river, which have been reversed from sale heretofore on account of the claim of the State thereto, will continue reserved, for the time being, from sale or from location, by any species of scrip or warrants, notwithstanding the recent decision of the Supreme Court against the claim.

This action is deemed necessary to afford time for Congress to consider, upon memorial or otherwise, the case of actual bona fide settlers holding under titles from the State, and to make such provision, by confirmation or adjustment of the claims of such settlers, as may appear to be right and proper.

JOS. S. WILSON,
Commissioner of the General Land Office.

GENERAL LAND OFFICE, *May* 18, 1860.

Such notice was at once posted in a conspicuous place in said land offices in Iowa, and so remained posted until the close of the year 1863, and in the office at Des Moines the same still remains posted.

EXHIBIT 58.

On the 25th May, 1860, Wm. T. Steiger, an agent in behalf of the Dubuque & Pacific Railroad Company, filed in the General Land Office a list of lands lying within the claimed limits of the Des Moines River grant above the Raccoon Fork, and claimed to select some of them for said railroad company, under the act of 15th May, 1856, granting lands to Iowa for railroad purposes.

A copy of said letter, an abstract of list C, and diagram D, attached thereto, are as follows:

WASHINGTON, *May* 25, 1860.

Hon. JOSEPH S. WILSON,
Commissioner General Land Office:

SIR: Referring to the recent decision of the Supreme Court of the United States on the Des Moines improvement claim, I herewith transmit a list, marked "C," of my selections of this date for and on account of the Dubuque & Pacific Railroad and branch, under the act of 15th May, 1856, of the interfering lands in the Fort Dodge district, Iowa, within the six and fifteen mile limits of said railroad grant, and heretofore held in suspension in our adjustment.

This list discriminates the lands conditionally approved for the river grant from those not yet approved in any list, and embraces as follows:

136	Whole quantity, six-mile limits	59,814.22	acres.
	fifteen-mile limits	73,792.35	"
	Total	133,606.57	

of which the quantity not yet approved, all west of the river, is as follows:

Not approved, six-mile limits	15,450.47	acres.
fifteen-mile limits	16,214.12	"
Total	31,664.59	

I also enclose a connected diagram, marked "D," showing by the pink and yellow shades thereon the lands hereby selected.

Very respectfully, your obedient servant,

WM. T. STEIGER, *Agent, &c.*

Please acknowledge the receipt hereof.

Abstract of list C referred to in the foregoing letter.

A list of lands claimed and selected for the Dubuque & Pacific Railroad grant in the district of lands subject to sale at Fort Dodge, Iowa, under the act of Congress approved 15th May, 1856, all situated within the limits of the Des Moines River grant claim above the Raccoon Fork, vacated by the recent decision of the Supreme Court of the United States, being also land suspended in the adjustment of the railroad grant at the General Land Office.

Here follows a lengthy description of lands within six-miles limit of grant, being located in T. 88, R. 26, T. 88, R. 27, T. 89, R. 27, T. 88, R. 28, T. 89, R. 28, T. 90, R. 28, T. 88, R. 29. Then follows a description of the lands being in T. 89, R. 29, and T. 90, R. 29; also lands in T. 88, R. 30, and T. 99, R. 39.

Then follows a description of lands within the fifteen-mile limit of the grant, being in T. 86, R. 26 (these lands are all erased on the list as certified to us by the mark of a pencil in red), T. 87, R. 26 (all of these lands are erased in the same manner except S. ½ of section 9), T. 88, R. 26, T. 86, R. 27 (all of these are erased), T. 87, R. 27 (all of the alternate sections from 13 to 35, inclusive, and portions of other odd-numbered sections

are here erased), T. 88, R. 27, T. 91, R. 27 (erased), T. 86, R. 28 (erased), T. 87, R. 28 (all in alternate sections from 13 to 35, inclusive, and portions of other sections here erased), T. 88, R. 28, T. 90, R. 28 (lands in
137 sections 1, 3, and 5 erased), T. 91, R. 28 (all erased), T. 87, R. 29, T. 88, R. 29, T. 90, R. 29, T. 91, R. 29 (all erased).

RECAPITULATION.

Six	miles limit of grant.....	59, 814. 22
Fifteen	" " "	73, 792. 35
	Total.....	133, 606. 57

Of the above not approved to river grant:

Six	miles limit.....	15, 450. 47
Fifteen	"	16, 214. 12
	Total.....	31, 664. 59

At foot of list appears the following:

WASHINGTON, *May* 25, 1860.

I hereby select the lands enumerated in the foregoing list for and on account of the Dubuque & Pacific Railroad grant, under the act of 15th May, 1856.

WM. T. STEIGER, *Agent, &c.*

EXHIBIT 59.

The Commissioner of the General Land Office, in June, 1860, acknowledged the receipt of the list, and added:

The tracts in said list are above the Raccoon Fork and within the lands that had been selected under the Des Moines River grant by act of August 8, 1846, and in view of the recent decision of the Supreme Court affecting a title to lands under that grant above the said fork, the present lists are presented by you. As the matter has been placed in train for Congressional intervention, no action can be taken in the matter presented by you until Congress shall have had time to consider and dispose of the subject.

Respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner.*

EXHIBIT 60.

On the 7th July, 1860, the Commissioner of the Land Office, in an official letter to the Secretary of the Interior in relation to the same subject, said:

Without passing upon or in fact considering the question as to the right of the State under the railroad grant to these lands, which at the date of the grant had been withdrawn from sale or location, the fact that Con-

gress has taken incipient action in the matter of itself justifies us
138 in not recommending further proceeding by the Department until after the close of the next session of Congress.

Respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner.*

EXHIBIT 61.

On the 13th of August, 1860, the Commissioner of the General Land Office presented to the Secretary of the Interior a proclamation for the sale of public lands at the Fort Dodge and Sioux City offices, of which the following is a copy:

GENERAL LAND OFFICE,
August 13, 1860.

SIR: I have the honor to lay before you (No. 1) a proclamation of public lands in the Fort Dodge and Sioux City districts, Iowa, embracing 1,270,623 acres, heretofore unoffered, the sales to be held as follows:

At Fort Dodge, November 19, 1860.

At Sioux City, November 26, 1860.

This (No. 1) proclamation embraces the lands in the yellow shades on the enclosed diagram A; also those in the blue shades. The blue shades are lands above the Raccoon Forks which had been claimed under the Des Moines River grant before the recent decision of the Supreme Court. It does not, however, embrace any of the lands south of the blue shades and above the forks, which had been certified to the State under sanction of your predecessors, according to the then claimed limits of the Des Moines grant.

No. 2 is an alternate proclamation for 496,730 acres, including the blue-shaded lands, and only embracing the yellow, and is submitted in case it should be decided to await action by Congress over the whole claimed extent of the Des Moines grant.

Very respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner.*

(Indorsement:)

DEPARTMENT OF THE INTERIOR,
August 14, 1860.

Respectfully submitted to the President, with the recommendation that the lands be proclaimed for sale according to the form (No. 1) enclosed.

J. THOMPSON, *Secretary.*

EXHIBIT 63.

Report of the chairman of the Committee on Public Lands of the House, May 28, 1856.

GENERAL LAND OFFICE,
May 28th, 1856.

This is to certify that in the report from this office to the Committee on Public Lands of the House, on which was based the bill No. 17, ap-

proved May 15, 1856, granting lands to Iowa for certain railroads,
139 the estimates of the land which would be conveyed by the said bill were founded on the construction of the Des Moines River grant, to the effect that that grant extended to the source of the Des Moines River, and the alternate sections in a strip five miles in width on each side of the Des Moines River, above as well as below the Raccoon Fork, were reported as excluded from the amount of land that would pass by that bill, and reserved from its operation.

A. R. PARKER,
Draughtsman House Representatives.

HOUSE OF REPRESENTATIVES, *May* 28, 1856.

The above statement of Mr. Parker is correct.

H. BENNETT,
Chairman House Committee on Public Lands.

EXHIBIT 64.

Contract between State of Iowa and Des Moines Navigation and Railroad Company, June 9th, 1854.

Articles of agreement made and entered into this ninth day of June, 1854, by and between the Des Moines Navigation and Railroad Company (a corporation formed under the laws of the State of Iowa), party of the first part, and the State of Iowa, by Josiah H. Bonney, commissioner of the Des Moines River improvement, by and with the consent and approval of Uriah Biggs and George G. Wright, assistant commissioners in the State of Iowa, party of the second part, witnesseth:

That whereas the commissioners before named have heretofore entered into an agreement with Henry O'Reilly, bearing date the 17th day of December, eighteen hundred and fifty-three, and an additional and explanatory agreement, dated April 18th, 1854, for the completion of Des Moines River improvement, and which said agreement, contracts, and all right of said Henry O'Reilly, by and with the consent and approval of both parties thereto, have been assigned and transferred to and for the benefit of the Des Moines Navigation and Railroad Company, and in pursuance of a stipulation of the said party of the second part, made simultaneously with said agreements, and to carry the same fully into effect.

The said parties, for the purpose of simplifying and more fully explaining the said contracts and agreements, the said Des Moines Navigation and Railroad Company, of the first part, and Josiah H. Bonney, commissioner, with the consent and approval of Uriah Biggs and Geo. G. Wright, assistant commissioners, of the second part, hereby enter into the following agreement:

First. The said party of the first part doth hereby covenant and agree to and with the party of the second part, for the consideration hereinafter named, to make and finish the Des Moines River improvement from the Mississippi River to Raccoon Forks, on said Des Moines River, the said improvement to be made according to the plans and specifications of the engineer of said improvement heretofore made and determined upon
140 as to the style, character, and quality of work, from the town St.

Francisville, on said river, to said Raccoon Forks, except that the said party of the first part may improve the style and character of the work, and enlarge the size of the locks, as hereinafter provided; and so far as relates to the said work below the said town of St. Francisville, the same shall be done and completed upon such plan as may be determined upon by the engineer employed on said work, in connection with Wm. J. McAlpine, late State engineer of the State of New York, as consulting engineer, as the said party of the first part shall select for that purpose; provided that all said work shall be done and completed in a substantial manner, so as to secure the navigation of said river to the fullest extent, and for the longest period each year practicable; and provided further that the said party of the first part shall not be required to expend below the said town of St. Francisville in said improvement more than the sum of three hundred thousand dollars; and provided also that during the progress of the work the said party of the first part, their successors and representatives, by and with the consent of the engineers in charge of the work, may alter or change the character and style of the work, or location of either of the locks, dams, or canals, or all of them, or any part thereof; provided no changes shall be made authorizing an inferior kind of work, or the use of less valuable materials, or lessening the capacity of said locks, or of any piece of canal necessary for the use of any of said locks, or diminishing in usefulness or value the said general improvement; and in case of any disagreement between the engineer in charge of said work and the party of the first part, or their successors, in reference to the proposed sites or locations or modes of constructing the locks, dams, or otherwise, the matters of difference shall be submitted for arbitration to the consulting engineer, or to other persons to be agreed upon by both parties to this contract, whose decision upon the points submitted shall be conclusive upon all parties.

Second. The said party of the first part further agrees to and with the said party of the second part to complete all said work from the Mississippi River to said Raccoon Forks on or before the first day of July, 1858; and in like manner undertakes and covenants to complete at least one-fourth part of said work each and every year, commencing on the first day of July, 1854.

Third. The said party of the first part doth further agree and covenant with the said party of the second part to pay and discharge any and all debts of every kind and description outstanding against the said Des Moines River improvement on the 23d day of December last, within ninety days from the date of this contract, provided that the whole amount of said debts shall not exceed the sum of sixty thousand dollars; and to meet and discharge said liabilities the said Des Moines Navigation and Railroad Company have deposited with and paid over to the said Josiah H. Bonney, commissioner, the sum of fifty-five thousand dollars; and it is hereby agreed that the said party of the first part shall have, and is hereby entitled to, all moneys due and owing to said improvement from the General Government, and all claims and demands against the said General Government, and all sums of money due from any other source, as also
141 all sums of money now in the hands of said register, or that were in his hands on the 17th day of December last, or that may have been received by him or have been in his hands on account of said improvement at any time since the said 17th day of December, 1853; and the said sums

of money in the said register's hands on the 17th day of December, or that may have been in his hands at any time since, may be applied to the payment of any portion of the above-named debts, or for any debts incurred since the 17th day of December in prosecuting the said improvement, and shall be by said register accounted for to the said Des Moines Navigation and Railroad Company.

Fourth. All claims by mill owners or other persons for damages or rights of way, or other necessary privileges, in the prosecution of said work, as well as other claims for damages, shall be settled for by the said party of the first part, and on such terms as they may deem best; and the title to all such rights of way so procured shall be taken and vest in the State of Iowa, subject to the right of the party of the first part therein as in this contract mentioned; and all work now progressing under contracts existing on the said 17th day of December last, at the dams and locks at Belfast, Farmington, and Keosauqua, shall progress and be carried on under and according to the terms of the respective contracts then existing in relation thereto if the said contractors shall so elect, and shall be paid for by the said party of the first part on the estimates made by the engineer from time to time.

Fifth. The said party of the first part doth hereby further agree and covenant that the salaries of the commissioners and register of said improvement, and the salaries of the engineers and such assistants as may be required in the prosecution of said work, shall by them be paid from time to time as the same shall become due and payable, provided that the salaries of the commissioner and register of said improvement shall not be greater than now fixed by law; and the salaries of the engineer and assistants shall be such as may be agreed upon by said commissioner, by and with the advice and consent of the party of the first part.

Sixth. The said party of the first part further agrees and covenants that in all cases where bona fide settlement was made on any of the said lands belonging to said improvement which were unsurveyed on the 24th day of January, 1853, the settlers on said land so unsurveyed shall have the right to purchase, at any time within one year after said lands are surveyed, their said lands, under the rules and regulations established by the commissioner and register, at the rate of one dollar and twenty-five cents per acre; but no such settler or claimant shall be entitled so to purchase more than one hundred and sixty acres.

Seventh. The said improvement shall be prosecuted in such a manner as not to unnecessarily impede the navigation of said river during the construction of said work, but in all cases the locks shall be construc ed
142 and finished so as to allow the passage of boats and other water crafts before any material obstructions shall be created by the erection of dams.

Eighth. The said party of the second part, on their part, hereby covenant and agree with the said party of the first part to sell and convey to the said party of the first part, in manner and upon the terms hereinafter provided, all of the lands donated to the State of Iowa for the improvement of the Des Moines River by act of Congress of August 8, 1846, which the said party of the second part has not sold up to the 23d day of December, 1853; for which said lands the said party of the first part covenants and agrees, in manner and form as fixed by this agreement, to pay the sum of thirteen hundred thousand dollars.

Ninth. The said party of the second part hereby transfers and assigns to and hereby invests in the said party of the first part any and all stone, timber, and all other material of every kind and description belonging to said improvement, now remaining along the line of said work or elsewhere, and hereby gives said party of the first part full power and authority to use and control the same as they may deem proper in connection with said improvements.

Tenth. The said party of the second part further covenants and agrees that the parties of the first part, their successors and assigns, shall, from the date hereof, have full possession and control of all locks and dams now completed, and shall, from time to time, as each lock and dam is completed, have the control and possession thereof, and when the whole work is completed shall have the entire and exclusive possession and control thereof for forty years from the first day of July, 1858, and shall from this date have the right to control and receive, as herein provided, all tolls and water-rents accruing from said improvement, and to make such contract or contracts or agreements and fix such rates in relation thereto as they may deem proper; provided always that this grant of said tolls and water-rents is made subject to the following express conditions:

1st. That the tolls to be taken and received by the said party of the first part shall in no event exceed the rate of tolls allowed and charg'able on the Monongahela improvement, in the State of Pennsylvania, on the 5th day of February, 1851.

2d. All contracts now outstanding between the commissioner and register, or either of them, with reference to the water-rents, with any individual or individuals, shall be carried out by the said party of the first part; and nothing herein contained shall be so construed as to interfere with said contracts, but the money arising therefrom shall belong to and become the property of the said party of the first part in the same manner as all other water-rents as fixed by this contract.

3d. All moneys arising from said tolls and water-rents on the entire work, after deducting the necessary contingent expenses attending the superintendence of the locks and the collection of said rents and tolls, and the repairs of said works during the time fixed for the completion
143 of said works, shall be reported to the register of the Des Moines River improvement semi-annually, and shall be expended by the said parties of the first part in said improvement; but such sums shall not be taken into the estimates upon which lands are to be transferred to the party of the first part, but shall constitute a portion of the one million three hundred thousand dollars to be expended by the party of the first part, and of the aggregate sum expended by the party of the first part in said improvement.

4th. At the expiration of said forty years the work shall revert to and become the property of the State of Iowa, and shall be in ordinary repair for their respective uses.

Eleventh. The said party of the second part hereby covenants and agrees that whenever the said party of the first part shall have done work to the amount of thirty thousand dollars, according to the estimates to be made by the acting engineer under the scale of prices to be fixed in their contract, the said party of the second part, or the then proper agent or officer or officers of the State, shall transfer and convey to the said party of the

first part, or to the then register of said improvement, or such other person as the party of the first part may direct, an amount in value of the lands belonging to said improvement, valued at one dollar and twenty-five cents per acre, to the amount of thirty thousand dollars, deducting fifteen per cent., and so on in the same manner on each estimate of thirty thousand dollars until work shall have been done to the amount of thirteen hundred thousand dollars, if so much land shall remain unsold from and after the 23d day of December, A. D. 1853, or until said work shall have been completed. And upon the expenditure of said thirteen hundred thousand dollars, or the completion of said works, all of said lands remaining unconveyed, if any, shall be transferred and conveyed to the party of the first part, or their assigns, or to such person or persons as they shall direct. And all moneys paid by the party of the first part to the register of the Des Moines River improvement, or to the commissioner thereof, in payment of the liabilities resulting from the former prosecution of the work by the State of Iowa, shall, without requiring any estimate to be made thereof by the engineer, be deemed to be a portion of the sums expended in the said improvements by the said party of the first part. And the said register shall convey to the party of the first part, or to such person or persons as they shall designate, a quantity of land, estimated at one dollar and twenty-five cents per acre, equal to the amount of cash thus paid; and the said sums thus paid shall form part of the thirteen hundred thousand dollars mentioned in this contract.

Twelfth. For the purpose of determining the lands which the said party of the first part shall have the right to select on estimates made as contemplated by the last section, it is agreed that within a reasonable time after concluding this contract the said party of the first part shall have all the unsold lands in this contract mentioned divided into three classes, according to value, and thereafter they shall take one-third of said
144 amounts as they may from time to time be entitled to from each class. And for all moneys expended until such classification they shall have the right to take such lands as they remain unsold, commencing with the lands lowest down on the river, making no distinction in quality or value. And for the purpose of classifying said lands, unless a commissioner is mutually agreed upon, each party may choose or select a commissioner, who shall mutually agree upon such classification; and in case of disagreement, the said two commissioners shall select a third, and the decision of the majority shall be conclusive. The expense of the said commission shall be defrayed by the party of the first part, and the records of such classification, duly certified by the said commissioners, or a majority of them, shall be filed with the register of the Des Moines River improvement, for reference by and government of both parties under this contract.

The river land office for the sale of lands belonging to the Des Moines River improvement having, in accordance with the contract with Henry O'Reilly heretofore referred to, been closed on the 23d day of December last, the said office shall remain closed for the entry or sale of lands, excepting by the direction of the party of the first part.

Thirteenth. It is understood and agreed between the parties that in the conveyance of land as contemplated by this contract all moneys advanced by the said party of the first part for salaries and pay of officers, or agents,

or servants, for right of way, damages to mill owners, and other matters not covered by actual work done on the improvement shall be included in making estimates; but the moneys that were in the hands of the register on the 17th day of December last and the value of the materials on hand (which shall be used) shall not be included for estimates.

Fourteenth. And it is also agreed and covenanted between the parties hereto that the following shall be the prices for the different items of work mentioned upon which the engineer is to make his estimates, and by which the parties are to be governed in the conveyance of land and other purposes contemplated by this agreement, adding twenty per centum to the aggregate amount of all estimates to cover all contingencies, to wit:

Repairing lock foundations, $3,000.

Masonry in lock walls, $5 per perch.

Masonry in side walls, $3.50 per perch.

Hydraulic cement, $3 per barrel.

Lock gates and all fixtures, $2,500.

Square timber, 14 cents per foot.

Oak plank, $2.25 per hundred feet, board measure.

Crib filling in dams and abutments, $1 per perch.

Stone protections, riprap, $1.15 per perch.

Embankments around locks, 20 cents per yard.

Excavations on canals when the dirt is wasted, 20 cents per yard; when the dirt is used in embankments, 15 cents per yard for the excavation and 15 cents per yard for the embankment.

145 Excavation of rock under water, $2 per perch.

Excavation of rock above water, $1 per perch.

Iron bolts, spikes, and other iron, 8 cents per pound.

Round timber, 11 cents per foot.

Excavations from foundations, 40 cents per yard. And all other items not embraced and enumerated above shall be rated according to the estimates of the engineer in charge; and the engineer or engineers in charge of said works shall from to time, as shall be found convenient, be appointed by the joint assent of both parties hereto.

Fifteenth. All the work on said improvement, during the progress thereof, shall be and remain under the general supervision of the board of public works and engineer, except as herein modified; and all the works as far as practicable shall be conducted as to perfect the navigation in a continuous line from the mouth of the river upward to Fort Des Moines.

Sixteenth. That for the purpose of providing more effectually for securing the improvement of the Des Moines River to the greatest extent and the earliest practicable period, the party of the first part shall have the right to such tolls and water-rents as they can collect on the river above Fort Des Moines, for a similar period to that provided for the use of the river below Fort Des Moines under this contract; provided they shall, within eight years, at their own expense, improve the river so as to render it navigable for boats of at least two hundred tons burthen to the Lizzard Forks, or to Fort Dodge, or to such other point above Fort Des Moines as they may find it practicable; provided further that no higher average of tolls shall be charged on vessels or rafts, or articles transported, than the maximum allowed on the section of the river between the Mississippi River and Fort Des Moines; and provided also that at the end of said period in

this section first named the improvement on said upper region of the river above Fort Des Moines shall be surrendered to and become the property of the people of the State of Iowa, upon the payment of the said party of the first part, or their successors, of such sum as the said improvement may be worth at the time, to be determined by appraisers to be mutually agreed upon.

Seventeenth. The same right which is now or may hereafter be given by law to this said board of public works to condemn lands in procuring right of way for the location of dams, locks, water-power, and canals shall be, and is hereby, given to the party of the first part; and in procuring the same they may, if necessary, use the name of the said board of public works, or that of the State, and the board shall assist therein, in accordance with the general spirit of this contract.

Eighteenth. The said party of the first part hereby covenant and agree that the State shall not be liable to them in this contract, but will look alone to the funds belonging to and arising from the said improvement for compensation as hereinbefore mentioned; and the said party of the second part does hereby agree that if the indebtedness named in the third
146 section of this contract shall exceed the sum of sixty thousand dollars, the time for the use of said improvement by the said company shall be extended one year beyond the time named in the tenth section of this contract, to wit, the first day of July, in the year 1899 (eighteen hundred and ninety-nine).

Nineteenth. The fifteen per cent. reserved in the conveyance of the land, by section eleven of this contract shall be esteemed and taken as a part of the thirteen hundred thousand dollars agreed to be paid by the said party of the first part in this agreement.

In witness whereof the party of the first part, by their president and secretary, have hereunto subscribed their names and placed their corporate seal, and the party of the second part, by the commissioners aforesaid, have also affixed their names and seals, the day and year aforesaid.

OFFICIAL SEAL OF THE DES MOINES NAVIGATION AND R. R. COMPANY.

ORVILLE CLARK, *President.*
HENRY O'REILLY,
Sec. of the Des Moines Navigation and R. Company.
JOSIAH H. BONNEY, [L. S.]
Commissioner of Des Moines River Improvement.
URIAH BIGGS. [L. S.]
GEORGE G. WRIGHT. [L. S.]

Supplementary agreement.

Whereas by the foregoing agreement, bearing date the ninth day of June, instant, the Des Moines Navigation and Railroad Company, of the one part, and the State of Iowa, by Josiah H. Bonney, commissioner of the Des Moines River improvement, by and with the consent and approval of Uriah Biggs, George G. Wright, assistant commissioners of the said improvement, have contracted and provided for the completion of the said improvement from the mouth of the said Des Moines River to the Raccoon Fork, on the terms and according to the plan and specifications in the said contract provided, and it being deemed desirable to enlarge the said

locks and capacity of such canal as may be built in the prosecuting said improvement under said agreement:

Now, therefore, this additional and supplementary agreement witnesseth:

That the said Des Moines Navigation and Railroad Company, of the first part, for and in consideration of the covenants herein contained, do covenant and agree with the State of Iowa, by the commissioner and assistant commissioners hereinbefore mentioned, to build the said locks provided to be built in said agreement of the ninth of June, instant, two hundred feet long, in the same proportion that the present locks and plans provided for their being one hundred and seventy-five feet long, and that they shall be so constructed as to secure four and a half feet of water on the lower mitre sill, and to secure a navigation of at least four and a half feet of water. And the canals shall be so constructed as to give at least four and a half feet of water, with suitable dimensions for boats or vessels navigating the same, with such depth of water at the locks and in the
147 canals, and in all other respects the said work is to be done under and in pursuance of the terms and conditions of the said contract of the ninth of June, instant.

And the said party of the second part, the State of Iowa, by the commissioner and assistant commissioners aforesaid, do covenant and agree with the party of the first part that the said party of the first part shall have and enjoy the said works, its use, rights, and privileges, its tolls, water-rents, and franchises, for the term of sixty years from the first day of July, 1858, fully and absolutely as is provided in said agreement of the ninth of June, instant, for forty years; and on the same terms therein provided, saving and excepting that from and after the first day of July, (1913) one thousand nine hundred and thirteen, until the first day of July, (1918) one thousand nine hundred and eighteen, the said party of the first part shall pay into the treasury of the State of Iowa seven per centum of the net amount of the tolls and water-rents received on the said improvement from the said Raccoon Forks to the month of the said Des Moines River, after deducting all expenses of repairs, superintendence, and other proper charges.

In witness whereof the said party of the first part, by their president and secretary, have hereunto subscribed their names and affixed their corporate seal. And the party of the second part, by the commissioners aforesaid, have subscribed their names and affixed their seals this ninth day of June, (1854) one thousand eight hundred and fifty-four.

OFFICIAL SEAL OF THE DES MOINES NAVIGATION AND R. R. COMPANY.

ORVILLE CLARK, *President.*
HENRY O'REILLY,
Sec. of the Des Moines Navigation and Railroad Company.
JOSIAH H. BONNEY, [L. S.]
Commissioner of Des Moines River Improvement.
URIAH BIGGS. [L. S.]
GEORGE G. WRIGHT. [L. S.]

I, Ed. Wright, secretary of state of the State of Iowa, hereby certify that I have compared the above printed copy of "contracts of the Des Moines Navigation and Railroad Company" with the original now on file

in this office, and find the same correct.

In testimony whereof I have hereunto set my hand and caused the great seal of the State of Iowa to be affixed.

Done at Des Moines this 26th day of May, A. D. 1871.

{ GREAT SEAL OF THE STATE OF IOWA }

ED. WRIGHT,
Secretary of State.

EXHIBIT 69.

Certified copy of lists certified and approved to the State under act of Congress approved July 12, 1862.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
January 30, 1874.

I, Willis Drummond, Commissioner of the General Land Office,
148 do hereby certify that the annexed copy is a true and literal exemplification of the original now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

WILLIS DRUMMOND,
Commissioner of General Land Office.

DES MOINES RIVER GRANT.

List of the lands in the district of lands in the late Fort Dodge district subject to sale at Fort Des Moines, within the five-mile limits granted to the State of Iowa by the act of Congress approved the 12th of July, 1862, entitled "An act confirming a land claim in the State of Iowa, and for other purposes," being the vacant and unappropriated lands in the alternate odd-numbered sections in place, for five sections in width on each side of the Des Moines River from the Raccoon Fork to the northern boundary of said State.

List of lands claimed by the State of Iowa under acts of August 8, 1846, *and July* 12, 1862, *for the improvement of the Des Moines River, Des Moines district.*

Parts of section.	Sec.	Town.	R'ng.	Acres.
Lots 7, 8, 9, 10, and 11, and S. hf. SW	7	89	28	285.04
Lots 5, 6, 7, 8, 9	19	"	"	119.91
Lot 4	29	"	"	57.70
NE. qr., NW. qr., SW. qr., W. hf. of SE. qr., lots 2, 3	31	"	"	655.93
Lots 5, 6	31	90	"	96.97
NE. qr	7	89	29	160.00
SE. qr.	7	"	"	160.00
NE. qr., NE. qr	19	"	"	40.00
NW. qr	23	"	"	160.00
SW. qr	23	"	"	160.00
SE. qr.	23	"	"	160.00
NE. qr.	29	"	"	160.00
SE. qr.	29	"	"	160.00
NE. qr., SE. qr., SW. qr., NW. qr	3	"	"	627.90
NE. qr., SE. qr., SW. qr., NW. qr	5	"	"	611.26
All of	9	"	"	640.00
"	11	"	"	640.00
"	13	"	"	640.00
"	15	"	"	640.00
"	17	"	"	640.00
"	21	"	"	640.00
"	25	"	"	640.00
"	27	"	"	640.00
"	33	"	"	640.00
149 All of	35	89	29	640.00
NW. qr., W. hf. SW. qr., lots 4, 5, 6, 7, 8	1	89	29	452.82
S. hf.	19	90	29	479.48
NW. qr	19	90	29	

List of lands claimed by the State of Iowa, &c.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Acres.
S. hf	21	90	29	320. 00
All of	29	90	29	640. 00
"	33	90	29	640. 00
"	35	90	29	640. 00
E. hf	31	90	29	320. 00
E. hf. NW. qr	31	90	29	80. 00
E. hf. SW. qr	31	90	29	80. 00
SE. qr. of SE. qr SW. qr., W. hf. SE. qr., lots 1 and 2	23	90	29	316. 55
SW. qr W. hf. NW. q'r., W. hf. SE. qr., SE. qr. NW. qr., lots 3, 4, 5, and 6	25	90	29	522. 98
W. hf SW. qr., W. hf. SE. qr., NE. qr. SE. qr., lot 2	1	90	29	630. 10
E. hf., lots 1, 2, 3, 4, 5	3	90	29	481. 80
E. hf SW. qr., S. hf. NW. qr	5	90	29	552. 39
E. hf E. hf. NW. qr., E. hf. SW. qr., SW. qr. SW. qr	7	90	29	520. 78
NW. qr. NW. qr., lots 5, 6, and 7	13	90	29	189. 14
All of	9	90	29	640. 00
"	11	90	29	640. 00
"	15	90	29	640. 00
"	17	90	29	640. 00
NE. qr	19	90	29	160. 00
NE. qr	21	90	29	160. 00
NW. qr	21	90	29	160. 00
NW. qr W. hf. NE. qr., NE. qr. NE. qr., lot 1	23	90	29	319. 30
				20, 240. 95

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to three inclusive, is a true and correct list of the tracts of land within the five-mile limits granted to the State of Iowa by an act of Congress approved the 12th July, 1862, entitled "An act confirming a land claim in the State of Iowa, and for other purposes," being a part of the vacant and unappropriated lands in the alternate, odd-numbered sections "in place," for five sections in width, on each side of the Des Moines River, from the Raccon Fork to the northern boundary of said State, which inure to said State under said act, for the use and benefit of the proper grantees of said State, and they are now submitted for the approval of the Secretary of the Interior (notwithstanding the erroneous approval of April 7, 1863, to said State, under the railroad grant of May 15, 1856), in accordance with the requirements of said act of July 12, 1862, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first herein named.

[SEAL.] WILLIS DRUMMOND,
Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January 29, 1874.

Approved, subject to the conditions and rights above mentioned.
C. DELANO, *Secretary.*

STATE OF IOWA, REGISTER OF THE LAND OFFICE,
Des Moines, Feb'y 10, 1874.

I, Aaron L. Brown, register of the State land office of the State of Iowa, hereby certify that the foregoing is a true and correct copy of the original

list No. 12 in this office, with certificate and captions and approval, as appears above.

In testimony whereof I have hereunto set my hand and affixed my official seal the date above written.

[SEAL.] AARON BROWN, *Register.*

EXHIBIT 70.

Certified list by register of State land office, and approved by the governor:

A list of lands in the odd-numbered sections within five-miles limits of the Des Moines River, situated in Webster County, Iowa, which have been approved and certified to the State of Iowa by the Department of the Interior under the act of Congress entitled "An act confirming a land grant to the State of Iowa, and for other purposes," approved July 12th, 1862.

	Parts of section.	Sec.	Town.	R'ng.	Acres.
	Lots 4, 5, 6, 7, and 8	1	89	29	214. 82
	W. hf. SW. qr., NW. fr. qr	1	89	28	238. 00
	All of	3	89	29	627. 90
	All of	5	89	29	611. 26
	E. hf	7	89	29	320. 00
	All of	9	89	29	640. 00
	All of	11	89	29	640. 00
	All of	13	89	29	640. 00
	All of	15	89	29	640. 00
	All of	17	89	29	640. 00
	NE. qr. NE. qr	19	89	29	40. 00
151	All of	21	89	29	640. 00
	W. hf	23	89	29	320. 00
	W. hf NE. qr	25	89	29	80 00
	SE. qr. of NE. qr	25	89	29	40. 00
	SE. qr	25	89	29	160. 00
	W. hf	25	89	29	320. 00
	All of	27	89	29	640. 00
	E. hf	29	89	29	320. 00
	All of	33	89	29	640. 00
	NE. qr. NE. qr	35	89	29	40. 00
	W. hf. NE. qr	35	89	29	80. 00
	SE. qr	35	89	29	160. 00
	W. hf	35	89	29	320. 00
	Lot 2	1	90	29	27. 42
	NE. qr. SE. qr	1	90	29	40. 00
	W. hf. SE. qr	1	90	29	80. 00
	SW. qr	1	90	29	160. 00
	N. fr. hf	1	90	29	322. 68
	Lots 1, 2, 3, 4, and 5	3	90	29	169. 38
	NE. fr. qr	3	90	29	152. 43
	SE. qr	3	90	29	160. 00
	NE. fr. qr	5	90	29	152. 39
	S. hf. NW. qr	5	90	29	80. 00
	S. hf	5	90	29	320. 00
	SW. fr. qr. SW. qr	7	90	29	40. 78
	E. hf. NW. qr	7	90	29	80. 00
	E. hf. SW. qr	7	90	29	80. 00
	E. hf	7	90	29	320. 60
	All of	9	90	29	640. 00
	All of	11	90	29	640. 40
	Lots 5, 6, and 7	13	90	29	149. 14
	NW. qr. NW. qr	13	90	29	40. 00
	All of	15	90	29	640. 00
	All of	17	90	29	640. 00
	All of	19	90	29	639. 48
	All of	21	90	29	640. 00
	All of fr	23	90	29	635. 85
	Lots 3, 4, 5, and 6	25	90	29	162. 98
	W. hf. SE. qr	25	90	29	80. 00
	SE. qr. NW. qr	25	90	29	40. 00
	W. hf. NW. qr	25	90	29	80. 00
	SW. qr	25	90	29	160. 00
	All of	27	90	29	640. 00
152	All of	29	90	29	640. 00
	E. hf. NW. qr	31	90	29	80. 00
	E. hf. SW. qr	31	90	29	80. 00
	E. hf	31	90	29	320. 00
	All of	33	90	29	640. 00
	All of	35	90	29	640. 00
	Total				19, 424. 51

STATE LAND OFFICE, DES MOINES, IOWA.

Whereas the lands described in the foregoing list have been approved and certified to the State of Iowa by the Department of the Interior, under the act of Congress entitled "An act confirming a land grant to the State of Iowa, and for other purposes," approved July 12, 1862;

And whereas the said lands have been, by act of the general assembly, granted to the Des Moines Valley Railroad Company, to be listed and certified to said company upon its compliance with the conditions of the grant;

And whereas said company has complied with and fulfilled the conditions of the grant, and has made application for a list of the lands aforesaid, for the purpose of vesting in said company the right of the State in and to the same, in accordance with section 93 of the Code of 1873:

Therefore the foregoing list has been prepared in accordance with said section of the code, for the purpose of vesting said company with the title to the lands therein described, and the same is now respectfully submitted to the governor for his approval, subject to any valid interfering rights that may exist to any of the tracts therein described.

In testimony whereof I have hereunto set my hand and affixed my official seal this fourteenth day of May, A. D. 1874.

[L. S.] AARON BROWN, *Register.*

STATE OF IOWA,
Executive Department:

Approved, subject to the rights and conditions herein before set forth, this fourteenth day of May, A. D. 1874.

In testimony whereof witness my hand and the great seal of the State of Iowa.

[L. S.] C. C. CARPENTER,
Governor of the State of Iowa.

By the governor:
JOSIAH T. YOUNG,
Secretary of State.

I hereby certify that the foregoing conveyance is recorded in volume A, pages 342, 343, and 344.

AARON BROWN,
Register State Land Office.

A list of lands in odd-numbered sections within five-miles limits of the Des Moines River, situated in Webster County, Iowa, which have been approved and certified to the State
153 *of Iowa by the Department of the Interior under the act of Congress entitled "An act confirming a land grant to the State of Iowa, and for other purposes," approved July 12, 1862.*

Parts of section.	Sec.	Twp.	R'ng.	Acres.
Lots 7, 8, 9, 10, and 11	7	89		205. 61
S. hf. SW. fr. qr.	7	89	28	80. 33
Lots 5, 6, 7, 8, and 9	19	89	28	119. 91
Lot 4	29	89	28	57. 70
All of fr.	31	89	28	655. 93
Total				1, 119, 48
And lots 5 and 6	31	90	28	96. 97
Aggregate				1, 216. 45

STATE LAND OFFICE, DES MOINES, IOWA.

Whereas the lands described in the foregoing list have been approved and certified to the State of Iowa by the Department of the Interior, under an act of Congress entitled "An act confirming a land grant to the State of Iowa, and for other purposes," approved July 12, 1862;

And whereas the said lands have been by act of the general assembly granted to the Des Moines Valley Railroad Company, to be listed and certified to said company upon its compliance with the conditions of the grant;

And whereas said company has complied with and fulfilled the conditions of the grant and made application for a list of the lands aforesaid for the purpose of vesting in said company the right of the State in and to the same, in accordance with section 93 of the Code of 1873:

Therefore the foregoing list has been prepared in accordance with said section of the code for the purpose of vesting said company with the title to the lands therein described, and the same is now respectfully submitted to the governor for his approval, subject to any valid interfering rights that may exist to any of the tracts therein described.

In testimony whereof I have hereunto set my hand and affixed my official seal this fourteenth day of May, A. D. 1874.

[L. S.] AARON BROWN, *Register.*

STATE OF IOWA,
Executive Department:

Approved, subject to the rights and conditions herein before set forth, this fourteenth day of May, A. D. 1874.

In testimony whereof witness my hand and the great seal of the State of Iowa.

[L. S.] C. C. CARPENTER,
Governor of the State of Iowa.

By the governor:
JOSIAH T. YOUNG,
Secretary of State.

I hereby certify that the foregoing conveyance is recorded in volume A, pages 345 and 346.

AARON BROWN,
Register of State Land Office.

154 STATE LAND OFFICE, DES MOINES, IOWA.

I, Aaron Brown, register of the State land office of the State of Iowa, hereby certify that the foregoing is a true and correct copy of the conveyances by the State of Iowa to the Des Moines Valley Railroad Company, made on the fourteenth inst., of certain lands in Webster County, certified to the State of Iowa by the Interior Department under the act of Congress approved July 12, 1862.

In testimony whereof I have hereunto set my hand and affixed my official seal this eighteenth day of May, A. D. 1874.

[SEAL.] AARON BROWN, *Register.*

Also a certified copy of the following lists of lands, with certificates:

List of lands claimed by the State of Iowa under acts of August 8, 1846, and July 12, 1862, for the improvement of the Des Moines River.

Parts of section.	Sec.	Town.	R'ng.	Acres.
All of	1	91	30	673. 64
All of	3	91	30	665. 32
All of	5	91	30	665. 38
N. hf. NE. qr., and NE. qr. NW. qr.	7	91	30	120. 00
All of	9	91	30	640. 00
All of	11	91	30	640. 00
N. hf. sec., SW. qr., and NW. qr. SE. qr.	13	91	30	520. 00
All of	15	91	30	640. 00
NE. qr. NE. qr	17	91	30	40. 00
N. hf. NE., and N. hf. NW. qr.	23	91	30	160. 00
All of	31	92	30	656. 68
All of	33	92	30	640. 00
E. hf. sec., NW. qr., and N. hf. SW. qr.	1	91	31	576. 19
All of	25	92	31	640. 00
NE. qr. and S. hf. sec.	27	92	31	480. 00
All of	35	92	31	640. 00
All of	27	90	29	640. 00
All of	29	90	29	640. 00
All of	33	90	29	640. 00
All of	35	90	29	640. 00
S. hf. NW. qr	5	90	29	80. 00
S. hf. NW. qr. and SW. qr	5	91	29	240. 00
E. hf. sec., E. hf. NW. qr., NW. qr. NW. qr., and SW. qr.	7	91	29	619. 97
W. hf. sec.	17	91	29	320. 00
All of	19	91	29	578. 24
W. hf. SW. qr. and W. hf. NW. qr.	29	91	29	160. 00
SE. qr. SE. qr	35	91	29	40. 00
Lot No. 4	20	89	28	57. 70
Total				13, 053. 12

155 GENERAL LAND OFFICE, *July 3d*, 1873.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the foregoing on pages one to two inclusive is a true and correct list of the tracts of land within the five-mile limits granted to the State of Iowa by the act of Congress approved the 12th of July, 1862, entitled "An act confirming a land grant to the State of Iowa, and for other purposes," being the vacant and unappropriated lands in the alternate, odd-numbered, sections "in place" for five sections in width on each side of the Des Moines River from Raccoon Fork to the northern boundary of said State—said lands having on the 27th December, 1858, been approved to the State of Iowa for the use and benefit of the Dubuque & Pacific Railroad Company under the grant of May 15, 1856, but which approval and certification were declared by the Supreme Court of the United States, in the case of Walcott vs. Navigation Company, to be null and void, and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of July 12th, 1862, for the use and benefit of the grantee of said State of Iowa, as mentioned in said act, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first herein above written.

[L. S.] WILLIS DRUMMOND, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
Washington City, D. C., January 29, 1874.

Approved, subject to the conditions and rights above mentioned.
C. DELANO, *Secretary.*

State of Iowa to the Des Moines Valley Railroad Company:

A list of lands in the odd-numbered sections within the five-mile limits of the Des Moines River, situated in Pocahontas County, Iowa, which have been approved and certified to the State of Iowa by the Department of the Interior, under the act of Congress entitled "An act confirming a land grant to the State of Iowa, and for other purposes," approved July 12, 1862.

Parts of section.	Sec.	Town.	R'ng.	Acres.
E. hf., NW. qr., and N. hf. SW. qr	1	91	31	576.19
S. hf. NW. qr. and N. hf. SW. qr	11	92	31	160.00
NE. qr. NE. qr	9	92	31	40.00
NE. qr	15	92	31	160.00
All of	25	92	31	640.00
NE. qr., S. hf	27	92	31	480.00
All of	35	92	31	640.00
E. hf. SE. qr	15	93	31	80.00
Total				2,856.19

156 STATE LAND OFFICE, DES MOINES, IOWA.

Whereas the lands described in the foregoing list have been approved and certified to the State of Iowa by the Department of the Interior under an act of Congress entitled "An act confirming a land grant to the State of Iowa, and for other purposes," approved July 12, 1862;

And whereas said lands have been, by act of the general assembly of the State of Iowa, granted to the Des Moines Valley Railroad Company, to be listed and certified to said company upon its compliance with the conditions of the grant;

And whereas said company has complied with and fulfilled the conditions of the grant, and has made application for a list of the lands aforesaid for the purpose of vesting in said company the right of the State in and to the same:

Therefore the foregoing list has been prepared in accordance with section ninety-three of the Code of 1873, for the purpose of vesting said company with the title to the land therein described, and the same is now respectfully submitted to the governor for his approval, subject to any valid interfering rights that may exist in any of the tracts therein described.

In testimony whereof I have hereunto set my hand and affixed my official seal this 14th of October, 1876.

DAVID SECOR,
Register of State Land Office.

STATE OF IOWA,
Executive Department:

Approved, subject to the rights and conditions herein before set forth, this 14th day of October, 1876.

[SEAL.] SAMUEL J. KIRKWOOD.

By the governor:
JOSIAH T. YOUNG,
Secretary of State.

I hereby certify that the above and foregoing is recorded in volume A, pages 541 and 542.

DAVID SECOR,
Register of State Land Office.

State of Iowa to the Des Moines Valley Railroad Company:

A list of lands in the odd numbered sections within five-mile limits of the Des Moines River, situated in Humboldt County, Iowa, which have been approved and certified to the State of Iowa by the Department of the Interior, under the act of Congress entitled "An act confirming a land grant to the State of Iowa, and for other purposes," approved July 12, 1862.

Parts of section.	Sec.	T'wn.	R'ng.	Acres.
SE. qr	7	92	28	160.00
NE. qr	31	92	28	160.00
Lots 1, 2, and 3	3	91	29	88.45
S. hf. NW. qr., SW. qr	5	91	29	240.00
E. hf. sec., E. hf. NW. qr., NW. qr. of NW. qr., SW. qr	7	91	29	619.97
W. hf	17	91	29	320.00
157 All of	19	91	29	578.24
W. hf. SW. qr., W. hf. NW	29	91	29	160.00
SE. qr. of SE. qr	35	91	29	40.00
W. hf. NE. qr.	19	92	29	80.00
SW. qr	25	92	29	160.00
Lots 1, 2, and 3, and SE. qr. SE. qr	27	92	29	150.68
Lots 1 and 2, and NW. qr. of NE. qr	29	92	29	148.92
NE. qr	31	92	29	160.00
NE. qr	33	92	29	160.00
NW. qr. and SE. qr	35	92	29	320.00
All of	1	91	30	673.64
All of	3	91	30	665.32
All of	5	91	30	665.38
N. hf. NE. qr., NE. qr. NW. qr	7	91	30	120.00
All of	9	91	30	640.00
All of	11	91	30	640.00
N. hf. of sec., SW. qr., NW. qr. of SE. qr	13	91	30	520.00
All of	15	91	30	640.00
NE. qr. of NE. qr	17	91	30	40.00
N. hf. NE. qr. and N. hf. NW. qr	23	91	30	160.00
NW. qr. of NW. qr	7	92	30	44.57
Lots 2 and 3	7	92	30	87.22
Lot 9 and SW. qr	23	92	30	186.05
Lots 5, 6, 7, 8, and S. hf. SW. qr	25	92	30	234.90
All of	27	92	30	640.00
All of	31	92	30	656.68
All of	33	92	30	640.00
NE. qr. of NW. qr. and W hf. of NW. qr	19	93	30	118.28
Total				10,918.30

STATE LAND OFFICE, DES MOINES, IOWA.

Whereas the lands described in the foregoing list have been approved and certified to the State of Iowa by the Department of the Interior under an act of Congress entitled "An act confirming a land grant to the State of Iowa, and for other purposes," approved July 12, 1862;

And whereas said lands have been by act of the general assembly of the

State of Iowa granted to the Des Moines Valley Railroad Company, to be listed and certified to said company upon its compliance with the conditions of the grant;

And whereas said company has complied with and fulfilled the conditions of the grant and has made application for a list of the lands aforesaid, for the purpose of vesting in said company the right of the State in and to the same:

Therefore the foregoing list has been prepared in accordance
158 with section ninety-three of the Code of 1873, for the purpose of vesting said company with the title to the lands therein described, and the same is now respectfully submitted to the governor for his approval, subject to any valid interfering rights that may exist to any of the tracts therein described.

In testimony whereof I have hereunto set my and affixed my official seal this 14th day of October, 1876.

[L. S.]

DAVID SECOR,
Register State Land Office.

STATE OF IOWA,
Executive Department:

Approved, subject to the rights and conditions herein before set forth, this 14th day of October, 1876.

[L. S.] SAM'EL J. KIRKWOOD.

By the governor:

JOSIAH T. YOUNG,
Secretary of State.

I hereby certify that the above and foregoing conveyance is recorded in volume A, pages 539 and 540.

DAVID SECOR,
Register State Land Office.

Defendant also introduced a duly certified copy of the original plat of the United States surveys of township 91, range 29 west 5 P. M., Iowa; and also of township 91, range 28 west of the 5 P. M., Iowa, being plats No. 11 and 12.

The plat of the survey of township 91, range 28 west 5 P. M., Iowa, shows that the township lines were run in September, 1853, and that the same was surveyed and subdivided in July, 1854, and that the map of the township was filed and approved by the surveyor-general November 8, 1854. The platted township 91, range 28, shows the survey of the lands west of the Des Moines River and west of the east fork of the Des Moines River; township lines run in June, 1853, subdivisions surveyed April 5, 1854, and the plat approved and filed November 8, 1854. This plat also shows that the east fork of the Des Moines River makes its junction with the main branch in section 19, township 91, range 28, and that the east stream making a junction with the main stream at the said point is designated on said official survey as the east fork of the Des Moines River, and that the west stream is designated as the Des Moines River.

Plat of township 91, range 29, designates the stream north of the junction of the east fork as the Des Moines River.

159 The court took the cause under advisement, and on the 21st day of November, 1878, in vacation, ordered the following

Decree.

Be it remembered that on this 25th day of September, 1878, it being the second day of the regular September term of said court, the trial of the above-entitled cause was continued, the plaintiffs appearing by Chas. A. Clark, their attorney, and the defendant appearing by Nourse, Kauffman & Co., its attorneys. And thereupon the introduction of testimony on both sides was continued and completed; whereupon the cause was fully argued by counsel upon both sides and submitted to the court, and the court having considered the evidence adduced and the argument of counsel, and being fully advised in the premises, it is therefore ordered, adjudged, and decreed by the court that the plaintiffs are the absolute and unqualified owners in fee simple of the lands described in their petition, and of each and every tract, parcel, and description of said lands; that the defendant's claim of title to said lands, and to each and every tract, parcel, and description thereof is void and unfounded in law and in fact; that all lists and certificates of said lands and each and every tract thereof, wherein or whereby the Commissioner of the General Land Office of the United States and the Secretary of the Interior of the United States have undertaken to certify said lands or any of them to defendant's use, or as enuring to the defendant or the State of Iowa, under the grants by virtue whereof the defendant claims title, and that all certificates or patents of said lands issued by the register of the State land office of Iowa and by the governor of Iowa to the defendant during the pendency of this suit, be, and are hereby, cancelled, annulled, and entirely held for naught, and that all such certificates or patents filed for record by the defendant and recorded in the offices of the recorders of deeds of Humboldt and Pocahontas Counties, respectively, be, and the same hereby are, cancelled of record; that the title to said lands, and each and every tract, parcel, and description thereof, be, and hereby is, quieted in the plaintiffs and their grantees; that the defendant, and all persons claiming by, through, or under it, be, and hereby are, barred and estopped from having or claiming any interest or title in or to said lands adversely to the plaintiffs or their grantees, or in any manner intermeddling with said lands or disquieting the title thereto.

It is further ordered, adjudged, and decreed by the court that the plaintiffs have and recover of the defendant, the Des Moines Valley Railroad Company, the costs of this action, taxed at $21.85 dollars, and that execution issue therefor.

160 Parties also filed the following

Stipulation.

It is stipulated by the parties that any statute of the United States or of the State of Iowa, or Indian treaty, relevant to this controversy, may be read on the trial of the cause in this or any appellate court, though not specified herein; and also it is stipulated that all the documents herein offered are genuine copies of what they purport to be; but the parties

severally reserve exceptions to the relevancy or competency of such evidence.

To the foreging evidence is appended the following

Certificate of the judge.

I do hereby certify that the defendant duly excepted to the decree at the time of its rendition, and that the foregoing is the evidence, and all the evidence, offered in the cause.

Witness my hand this 5th day of March, 1879.

ED. R. DUFFIE, *Judge.*

On the 26th of February, 1879, the defendant filed in said cause the following

Motion for a new trial.

AFFIDAVIT AND EXHIBITS.

Now comes the defendant and moves the court for a new trial and to set aside the decree heretofore ordered and entered in this cause, and for cause of said motion shows that since the hearing and submission of said cause the defendant has discovered additional and important evidence, and were surprised by the evidence offered by plaintiff, as shown by the affidavit and exibits hereto attached and made a part of this motion.

NOURSE, KAUFFMAN & CO.,
Attorneys for Defendant.

STATE OF IOWA,
Polk County, ss:

I, C. C. Nourse, being first duly sworn according to law, do depose and say that I am attorney for the defendant in this cause, and as such attorney have full and equal knowledge of the matters herein set out, of any agent or officer of said road, and that I do further say that upon the trial of said cause the plaintiffs introduced certain reports of the Commissioners of the General Land Office of the United States, with certain maps thereto attached, for the purpose of establishing the boundaries of certain Indian treaties, and for the purpose of proving that the lands in
161 controversy in this cause were within certain Indian reservations or treaties at the time of the passage of the act of Congress approved August 8, 1846.

That there was nothing in the pleadings in this cause indicating that any such question of fact would be made upon the trial hereof, and that previous to the day of trial defendant had no intimation from the plaintiffs or their attorneys that any such proof would be offered.

That in the trial of similar questions heretofore between the said plaintiffs and the defendant, involving the title to lands claimed by plaintiffs under the act of 1856, no such issue of fact had ever been made, and no such evidence offered.

That plaintiffs were not at the time prepared with any rebutting testi-

mony, and had no opportunity upon the trial to examine the evidence in detail offered by the plaintiffs.

That soon after the trial of said cause affiant visited the city of Washington for the purpose of ascertaining, from the records of the Department, whether or not the maps and plats offered by the plaintiffs in evidence were correct and truly represented the lines and boundaries of the Indian treaties offered in evidence.

That affiant called the attention of the Department to the maps contained in the reports of the Commissioners of the General Land Office offered in evidence in this cause, and had search made for the original survey of the boundary line between the Sacs and Foxes and Sioux Indians, as established by the treaty of August 19, 1825.

That after diligent search the original survey establishing said line was found of record in said Department, and the proper officers of the Department were ordered by the Commissioner of the General Land Office to make a proper map and plat, defining said boundaries according to said official survey, as also the boundaries established by the treaty of July 15, 1830, offered in evidence in this cause.

That said map and plat was duly made by the Department for the purpose of ascertaining the correct location of said boundaries according to said official survey and the records of said Department.

Affiant files herewith a certified copy of the map and plat so made, together with a copy of the field notes of the original survey, showing that the great body of the lands in controversy in this cause was not, at the date of August 8, 1846, within or north of the boundary of the Sioux reservation.

Affiant states that this evidence is important to the correct ascertainment of the true boundaries of said treaties, and that the evidence offered in the original cause has, as affiant verily believes, misled this court as to the facts relating to the boundaries of said Indian treaties.

Affiant further states that upon a re-trial of this cause said boundaries, as defined in said map, of said several Indian treaties, can be fully established by obtaining evidence that the pretense upon which complainants have recovered title to the lands in controversy if the decree already
162 rendered can be shown to be fallacious.

That the evidence now proposed to be offered could not with reasonable diligence be sooner obtained.

That no officer, agent, or attorney of defendant had knowledge of the existence of said evidence, or that prior to said trial the same would be necessary.

C. C. NOURSE.

Subscribed in my presence and before me, J. A. Jackson, a notary public in and for Polk County, Iowa; sworn to by said C. C. Nourse this 18th day of February, 1879.

[L. S.]

J. A. JACKSON,
Notary Public.

And the following duly certified copy of map and field notes:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan. 6, 1879.

I, J. M. Armstrong, Acting Commissioner of the General Land Office, do hereby certify that the annexed diagram is a true copy of the original on file in this office; and that the annexed field notes are a true, correct, and complete copy of the field notes of the Government survey of the boundary line between the Sacs and Foxes and Sioux Indians, as established by an official survey under the treaty of August 19, 1825 (Statutes at Large, vol. vii, p. 272), as the said field notes appear of record in this office, as filed therein in pursuance of law and the usage of this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

(Copy.)

Field book No. 1 of a survey of the line between the Sacs, Foxes, and Sioux tribes of Indians, agreeable to the treaty of 1825.

Rec'd with Ebe Herring's letter, January 15, 1836.

(In making the following copy, care was taken to have it conform to the original in all cases where a sentence, paragraph, or page was crossed.)

After taking the variation of the needle, on the evening of the 17th of April, 1832, and found the variation to be 9° 1′ 0″ E., I proceeded, on the 18th of April, 1832, to run the line between the Sacs, Foxes, and Sioux tribes of Indians, agreeable to the second article of the treaty held at Prairie Du Chien, 19th of August, 1825. Beginning at a point inaccessible in the middle of the main channel of the Upper Ioway River, and at its confluence with the Mississippi River—from said point a black ash, 12 inches in diameter, standing on the south bank of said river, bears S. 8 E., 205 links distant—running up said Ioway River as follows:

N. 82 W. 25.00—at 15.00 ch., a small slough 50 l'ks wide.
S. 86 W. 10.00 ch.
S. 54 W. 7.00 ch.
163 N. 67 W. 5.00 ch.
N. 75 W. 20.00 ch.
N. 42 W. 13.00 ch.—1 mile over low inundated land; timber, maple and elm.
N. 18 W. 25.00 ch.
N. 43 W. 24.00 ch.
N. 10 W. 18.00 ch.
N. 28 W. 5.00 ch.
S. 75 W. 8.00 ch.—2 miles; land low and inundated; timber, maple, elm.
S. 75 W. 12.00 ch.
N. 45 W. 17.00 ch.
S. 19 W. 42.00 ch.

S. 82 W. 9.00 ch.—3 miles, over level prairie; 2d rate land.
S. 69 W. 7.00 ch.—to a small black oak, 8 inches in diameter. At this place the Iowa River falls into the Mississippi bottom. April 18, 1832.
S. 70 W. 21.00 ch.
S. 46 W. 20.00 ch.
S. 25 W. 12.00 ch.
S. 79 W. 10.00 ch.
S. 47 W. 10.00 ch.—to 4 mile. Continued same course.
S. 47 W. 68.00 ch.
S. 4 E. 5.00 ch.
S. 33 E. 7.00 ch.—5 mile. Continued same course.
S. 33 E. 5.00 ch.
S. 51 W. 16.00 ch.
S. 35 E. 12.00 ch.
S. 35 W. 30.00 ch.
S. 70 W. 10.00 ch.
N. 60 W. 7.00 ch.—6 mile.
S. 60 W. 55.00 ch.
S. 36 W. 15.00 ch.
S. 60 W. 10.00 ch.—7 mile. April 18, 1832.
S. 38 W. 25.00 ch.
S. 25 W. 15.00 ch.
S. 46 W. 20.00 ch.
S. 72 W. 20.00 ch.—8 mile.
S. 55 W. 36.00 ch.
N. 20 W. 44.00 ch.—9 mile.
N. 20 W. 28.00 ch.
N. 71 W. 20.00 ch.
N. 33 W. 15.00 ch.
S. 71 W. 17.00 ch.—10 mile.
S. 71 W. 13.00 ch.
S. 23 W. 25.00 ch.
S. 39 E. 11.00 ch.
164 S. 2 E. 23.00 ch.
S. 28 W. 8.00 ch.—11 mile. A branch 50 l'ks wide running in from the south.
S. 45 W. 6.00 ch.
S. 88 W. 35.00 ch.
N. 68 W. 32.00 ch.
N. 41 W. 7.00 ch.—12 mile.
N. 41 W. 23.00 ch.
S. 69 W. 48.00 ch.
S. 55 W. 9.00 ch.—13 mile.
S. 55 W. 6.00 ch.
S. 42 W. 20.00 ch.
S. 57 W. 54.00 ch.—14 mile. April 19, 1832.
S. 57 W. 5.00 ch.
S. 78 W. 6.00 ch.—A branch 30 l'ks wide comes in from the south.
N. 67 W. 14.00 ch.
N. 61 W. 20.00 ch.

S. 84 W. 10.00 ch.
N. 83 W. 20.00 ch.
N. 69 W. 5.00 ch.—15 mile.
N. 49 W. 42.00 ch.
S. 37 W. 38 ch.—16 mile.
S. 37 W. 27.00 ch.
S. 67 W. 5.00 ch.
N. 88 W. 38.00 ch.
N. 50 W. 10.00 ch.—17 mile.
N. 50 W. 13.00 ch.—Here found lead mineral in a small ravine.
N. 26 W. 44.00 ch.
N. 74 W. 23.00 ch.—18 mile.
N. 74 W. 12.00 ch.
S. 20 W. 48.00 ch.—A small branch comes in from the south, and 4.00 chains NW. of the branch comes in a fork from the north; suppose 120 l'ks wide.
N. 85 W. 12.00 ch.
N. 56 W. 8.00 ch.—19 mile.
N. 56 W. 36.00 ch.
S. 74 W. 12.00 ch.
S. 8 W. 8.00 ch.
S. 50 E. 6.00 ch.
S. 22 E. 16.00 ch.—20 mile. April 22, 1832.
S. 14 E. 15.00 ch.
S. 2 W. 13.00 ch.
S. 35 W. 11.00 ch.
S. 53 W. 13.00 ch.
S. 79 W. 10.00 ch.
S. 48 W. 18.00 ch.—21 mile.
165 S. 48 W. 49.00 ch.
S. 83 W. 6.00 ch.
N, 50. W. 5.00 ch.
N. 69 W. 20.00 ch.—22 mile.
N. 69 W. 2.00 ch.
North 42.00 ch.
S. 80 W. 36.00 ch.—23 mile.
S. 80 W. 80.00 ch.—24 mile.
S. 80 W. 9.00 ch.
S. 32 E. 45.00 ch.—A branch comes in on the NW. side, 25 l'ks.
East 26.00 ch.—25 mile.
East 30.00 ch.
S. 12 E. 23.00 ch.
South 25.00 ch.
S. 63 W. 2.00 ch.—26 mile.
S. 63 W. 80.00 ch.—27 mile.
S. 63 W. 9.00 ch.
S. 29 W. 25.00 ch.
S. 21 E. 15.00 ch.
S. 82 E. 31.00 ch.—28 mile.
S. 82 E. 31.00 ch.
S. 25 E. 29.00 ch.
S. 52 W. 20.00 ch.—29 mile. April 23, 1832.

S. 52 W. 49.00 ch.—A branch 25 links wide comes in on the south side of the river.
N. 66 W. 31.00 ch.—30 mile.
N. 66 W. 24.00 ch.
N. 14 W. 56.00 ch.—31 mile.
S. 83 W. 56.00 ch.
S. 36 W. 9.00 ch.
S. 18 E. 15.00 ch.—32 miles.
S. 18 E. 28.00 ch.
S. 50 W. 22.00 ch.
S. 73 W. 30.00 ch.—33 mile. Here empties in a small fork from the NW.
S. 73 W. 10.00 ch.
S. 55 E. 60.00 ch.
S. 10 E. 10.00 ch.—34 mile.
S. 10 E. 14.00 ch.
S. 30 W. 20.00 ch.
S. 64 W. 25.00 ch.—A branch 25 l'ks wide, comes in from the SE.
S. 58 W. 8.00 ch.
S. 70 W. 13.00 ch.—35 mile.
S. 81 W. 32.00 ch.
S. 20 W. 20.00 ch.
S. 88 W. 28.00 ch.—36 mile.
166 S. 88 W. 32.00 ch.
S. 38 W. 21.00 ch.
S. 29 E. 4.00 ch.
S. 42 E. 23.00 ch.—37 mile.
S. 42 E. 3.00 ch.
S. 22 E. 6.00 ch.
N. 83 W. 10,00 ch.
N. 59 W. 9.00 ch.
N. 55 W. 21.00 ch.
N. 38 W. 18.00 ch. April 24, 1832.
S. 77 W. 6.00 ch.
S. 15 W. 7.00 ch.—38 mile.
S. 15 W. 18.00 ch.
S. 50 W. 13.00 ch.
S. 72 W. 49.00 ch.—39 mile.
S. 72 W. 18.00 ch.
S. 8 W. 14.00 ch.
S. 15 E. 10.00 ch.
S. 13 W. 38 ch.—40 mile.
S. 13 W. 12.00 ch.
S. 25 W. 5.00 ch.—A branch 50 l'ks wide, puts in from the SE. the left-hand fork of the Iowa River.
S. 80 W. 63.00 ch.—41 mile. Here the bottom land becomes more extensive, and the river more gentle, the hills not so high as before. And immediately in the fork or point stands 3 elm trees in a few feet of each other. I ascertained this to be the fork meant by the 2d article of the treaty of 19th August, 1825, by the road leading from

Prairie du Chien to the Red Cedar crossing it, as it is the only fork or branch of the Ioway River that the road crosses. Proceeded up said left-hand fork, as follows:

S. 20 W. 55.00 ch.
S. 5 E. 25.00 ch.—1 mile. From the forks a branch comes in from the SW. 15 l'ks wide.
S. 5 E. 65.00 ch.
S. 22 E. 15.00.—2 mile.
S. 22 E. 80.00 ch.—3 mile.
S. 22 E. 20.00 ch.
S. 9 W. 52.00 ch.—A branch comes in from the SE. 12 l'ks wide.
S. 55 W. 8.00 ch.—4 mile.
S. 55 W. 22.00 ch.
S. 30 W. 45 ch.
S. 11 E. 13.00 ch.—5 mile.
S. 37 E. 20.00 ch.
S. 24 E. 23.00 ch.
S. 56 W. 23.00 ch.
167 S. 42 E. 24.00 ch.—6 mile.
S. 42 E. 10.00 ch.
S. 78 E. 19.00 ch.
S. 43 E. 25.00 ch.
S. 26 E. 26.00 ch.—7 mile.
S. 26 E. 42.00 ch.
S. 52 E. 16.00 ch.—Here the trace leading from Prairie Du Chien to Red Cedar crosses this fork. It is here 12 l'ks wide. April 29, 1832.
S. 58 E. 22.00 ch.—8 mile.
S. 58 E. 28.00 ch.
S. 46 E. 52.00 ch.—9 mile.
S. 64 E. 18.00 ch.
S. 19 E. 45.00 ch.—To the source of the left-hand fork of the Ioway River; where set a stake and raised a mound, being 9 mile and 63 chains from the mouth of said fork to its source; thence assumed the course of S. 75 W. to strike the said fork of the river Des Moines, as follows:

S. 75 W. 80.00 ch.—To 1 mile, over rolling prairie; soil good.
S. 75 W. 80.00 ch.—2 mile, over rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—3 mile, over rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—4 mile, over rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—5 mile, over rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—6 mile, over rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—7 mile, over rolling prairie; barren land; timber, post oak; soil 2d-rate.
S. 75 W. 80.00 ch.—8 mile, over rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—9 mile, over rolling, poor prairie.
S. 75 W. 80.00 ch.—10 mile; poor, rolling, barony land.
S. 75 W. 80.00 ch.—11 mile. This mile 2d-rate; land, rolling; timber, oak.
S. 75 W. 80.00 ch.—12 mile. This mile rolling, barony land; April 30, 1832.
S. 75 W. 70.50 l'ks—A branch 20 l'ks wide runs.

S. 75 W. 80.00 ch.—13 mile; land rolling, 2d-rate; scattering oak timber.
S. 75 W. 19.00 ch.—To same branch, 15 l'ks wide; runs NW.
S. 75 W. 36.50—To same branch, 18 l'ks wide; bears S.
S. 75 W. 80.00 ch.—14 mile; land rolling; timber scattering; soil 2-rate.
S. 75 W. 80.00 ch.—15 mile; land broken; soil thin; timber, oak.
S. 75 W. 2.50 l'ks—To a creek, supposed to be Turkey River; creek 100 l'ks wide; runs south.
S. 75 W 58.00 ch.—To a branch 20 l'ks wide; runs N.
S. 75 W. 75.83 l'ks—To same branch 50 l'ks wide; runs E.
168 S. 75 W. 80 ch.—16 mile; land rolling and rich; timber, oak, elm, and lynn.
S. 75 W. 80.00 ch.—17 mile; land rolling, first-rate; timber, oak, ash, elm; undergrowth, hazel.
S. 75 W. 12.00 ch.—A branch, 15 l'ks wide, runs N.
S. 75 W. 80.00 ch.—18 mile; land rolling, first-rate; timber, oak, elm, and quaken asp; undergrowth, shoemake, hazel, and quaken asp.
S. 75 W. 80.00 ch.—19 mile, over level, 2d-rate prairie.
S. 75 W. 80.00 ch.—20 mile, over rolling, 2d-rate prairie. 1 May, 1832.
S. 75 W. 80.00 ch.—21 mile, over rolling, 2d-rate prairie. May 2, 1832. This day laid by in consequence of rain. May 3, detained in consequence of snow, 4 in. deep.
S. 75 W. 80.00.—22 mile, over rolling prairie; good, 2d-rate land.
S. 75 W. 80.00 ch.—23 mile, over rolling prairie; first half mile west, marshy; last half mile, first-rate land.
S. 75 W. 80.00 ch.—24 mile, over rolling land; first-rate; timber, oak, and hickory; undergrowth, hazel and shoemake.
S. 75 W. 71.00 ch.—To a creek 50 links wide; runs S.
S. 75 W. 80.00 ch.—25 mile, over rolling, 2d-rate prairie.
S. 75 W. 80.00 ch.—26 mile, over rolling, 2d-rate prairie.
S. 75 W. 80.00 ch.—27 mile, over rolling, 2d-rate prairie.
S. 75 W. 80.00 ch.—28 mile, over level and wet land, with some scattering timber, oak and some elm. May 4, 1832.
S. 75 W. 39.75 links—To a creek 50 l'ks wide, with a deep, gentle current; runs south.
S. 75 W. 80.00 ch.—29 mile, over low, wet prairie.
S. 75 W. 80.00 ch.—30 mile, over rolling, 1st-rate prairie.
S. 75 W. 80.00 ch.—31 mile, over rolling prairie; 2d-rate land.
S. 75 W. 80.00 ch.—32 mile, over rolling prairie; 2d-rate land.
S. 75 W. 80.00 ch.—33 mile, over rolling prairie; 2d-rate land.
S. 75 W. 80.00 ch.—34 mile, over rolling prairie; 1st-rate land.
S. 75 W. 54.00 ch.—To a creek 50 l'ks wide; runs S., with a deep, gentle current.
S. 75 W. 80.00 ch.—35 mile, over rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—36 mile, over level prairie; land 2d-rate.
S. 75 W. 80.00 ch.—37 mile, over level prairie; soil sandy and gravelly.
S. 75 W. 80.00 ch.—38 mile, over rolling, bushy, prairie; hazel.
S. 75 W. 80.00 ch.—39 mile, over rolling, barony land; timber, white and black oak; undergrowth, hazel and oak; 2d-rate.
S. 75 W. 47.50 l'ks—To a creek 50 l'ks wide; runs S.

S. 75 W. 80.00 ch.—40 mile. This mile low, wet prairie. May 5, 1832.

169 S. 75 W. 80.00 ch.—41 mile. This mile high, bushy prairie; 2d-rate.

S. 75 W. at 67.25 l'ks, a creek 75 l'ks wide; SE. Here detained a part of the 6th and 7th days of May, on account of rain and high water. Continued:

S. 75 W. 11.50 l'ks—42 mile. This mile mostly wet prairie.

S. 75 W. 80.00 ch.—43 mile. This mile barony land, 2d-rate; timber, oak; undergrowth, hazel and shoemake.

S. 75 W. 80.00 ch.—44 mile. This mile rolling prairie; good 2d-rate land.

S. 75 W. 80.00 ch.—45 mile. This mile rolling and brushy; hazel and plumb; some scattering timber; good 2d-rate soil.

S. 75 W. 49.50 l'ks—To the Red Cedar, 90 l'ks wide; bears SW.

S. 75 W. 30.50 l'ks—46 mile. On the west of this creek, first-rate soil; land level; timber, oak, elm, and lynn; undergrowth, oak and ironwood.

S. 75 W. 80.00 ch.—47 mile. This mile rolling, first-rate land; timber, oak, and quaken asp; undergrowth, hazel, quaken asp, ash, and ironwood.

S. 75 W. 80.00 ch.—48 mile. This mile rolling; soil rich; scattering groves of timber, oak and quaken asp; undergrowth, hazel, quaken asp, and shoemake. May 8, 1832.

S. 75 W. 80.00 ch.—49 miles. This mile rolling; soil first-rate; timber, oak, lynn, elm, and quaken asp; undergrowth, hazel, ironwood, quaken asp, and shoemake.

S. 75 W. 41.00 ch.—To a small creek, 50 l'ks wide; runs SE.

S. 75 W. 80.00 ch.—50 mile. On this mile the first 60.00 ch. first-rate land; timber, oak, sugar-tree, lynn, and elm; undergrowth, hazel and ironwood; the last 20.00 ch. wet; timber, quaken asp; undergrowth, same and hazel.

S. 75 W. 80.00 ch.—51 mile. This mile rolling, first-rate land; timber, oak, sugar-tree, lynn, and elm; undergrowth, hazel, plum, and ironwood.

S. 75 W. 46.00 ch.—To the Big Iowa River; 300 l'ks wide; runs east; this 46 ch. 1st-rate land. May 9, 1832.

S. 75 W. 6.50 l'ks—Struck the prairie immediately on the south bank of the river.

S. 75 W. 27.50 l'ks—52 mile. This last 27.50 l'ks rolling prairie; soil gravelly and thin.

S. 75 W. 80.00 ch.—53 mile. This mile rolling prairie; soil 2d-rate.

S. 75 W. 80.00 ch.—54 mile. This mile rolling prairie; soil 2d-rate.

S. 75 W. 80.00 ch.—55 mile. This mile mostly level, rich prairie.

170 S. 75 W. 80.00 ch.—56 mile. This mile level, rich prairie, but rather wet.

S. 75 W. 80.00 ch.—57 mile. This mile level, rich prairie.

S. 75 W. 80.00 ch.—58 mile. This mile level, rich prairie, but a little inclined to be wet.

S. 75 W. 80.00 ch.—59 mile. This mile rolling, with some scattering timber; on the last part of the mile, some hazel brush; soil 2d-rate.

S. 75 W. 80.00 ch.—60 mile. This mile roliing, with scattering timber, oak; undergrowth, same; soil 2d-rate.

S. 75 W. 80.00 ch.—61 mile. This mile level, 2d-rate land; timber, white oak, black oak, burnt oak and lynn.
S. 75 W. 8.50 l'ks—To a small creek, 50 l'ks wide; runs south.
S. 75 W. 80.00 ch.—62 mile. This mile level prairie; soil 1st-rate. May 10, 1832.
S. 75 W. 80.00 ch.—63 mile. This mile mostly high prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—64 mile. This mile rolling prairie; soil 1st-rate.
S. 75 W. 35.00 ch.—Struck the timber.
S. 75 W. 62.00 ch.—On this mile struck the Big Iowa or English River; 3.20 l'ks wide; runs south. May 11, 1832, 13.00 ch.; struck the river; 80.00 ch. 65 mile, on an island. This mile somewhat rolling; land 1st-rate; timber, oak, linn, and elm.
S. 76 W. 50.00—Crossed the creek to the south side.
80.00—66 mile; land rich; timber, oak, elm, and hackberry; undergrowth, prickly ash.
S. 75 W. 80.00 ch.—67 mile. This mile rolling prairie soil; 2d-rate.
S. 75 W. 80.00 ch.—68 mile. This mile rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—69 mile. This mile rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—70 mile. This mile level prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—71 mile. This mile level prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—72 mile. This mile rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—73 mile. This mile level prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—74 mile. Level prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—75 mile. This mile a little rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—76 mile. This mile level prairie; soil first-rate.
171 S. 75 W. 80.00 ch.—77 mile. This mile flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—78 mile. This mile flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—79 mile. This mile flat prairie; soil first-rate.
S. 75 W. 50.88 l'ks—To the NE. bank of a creek 50 l'ks wide; runs E. and W.
80.00 ch.—80 miles. This mile rolling prairie; soil 2d-rate.
S. 75 W. 80 ch.—81 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 80 ch.—82 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—83 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—84 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 8.80 l'ks—To the NE. bank of a small creek; 43 l'ks wide; bears SE. May 12, 1832.
80.00 ch.—85 mile. This mile flat prairie, with some timber along the creek; ash and maple.
S. 75 W. 80.00 ch.—86 mile. This mile flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—87 mile. This mile flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—88 mile. This mile rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—89 mile. This mile flat prairie, with ponds through; soil 2d-rate.
S. 75 W. 80.00 ch.—90 mile. This mile flat prairie, swamps, and ponds.
S. 75 W. 80.00 ch.—91 mile. This mile flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—92 mile. This mile flat and wet.
S. 75 W. 80.00 ch.—93 mile. This mile rolling prairie; soil 1st-rate.

S. 75 W. 80.00 ch.—94 mile. This mile rolling prairie with small ponds; soil 2d-rate.
S. 75 W. 80.00 ch.—95 mile. This mile flat prairie with ponds through.
S. 75 W. 80.00 ch.—96 mile. This mile flat prairie and a number of ponds.
S. 75 W. 80.00 ch.—97 mile. This mile flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—98 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—99 mile. This mile flat prairie; soil 1st-rate.
172 S. 75 W. 80.00 ch.—100 mile. This mile flat prairie; first half 1st-rate; last half wet.
S. 75 W. 80.00 ch.—101 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—102 mile. This mile rolling prairie; soil 2d-rate.
May 13, 1832. May 14, 1832, laid by in consequence of storm, rain, and snow.
S. 75 W. 61.50 l'ks—To the east bank of the north fork of the river Des Moines; 100 links wide; runs SE.
80.00 chs.—103 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—104 mile. This mile rolling prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—105 mile. This flat prairie; soil 2d-rate land; small ponds.
S. 75 W. 80.00 ch.—106 mile. This mile rolling prairie; 2d-rate.
S. 75 W. 80.00 ch.—107 mile. This mile rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—108 mile. This mile rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—109 mile. This mile rolling prairie, with considerable lake; bears E.; soil 2d-rate. At 109 miles, past the north end of a lake; from appearance is four or five miles long and one wide.
S. 75 W. 80.00 ch.—110 mile. This mile mostly flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—111 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—112 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—113 mile. This mile flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—114 mile. This mile flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—115 mile. This mile flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—116 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 39.50 l'ks—To the east bank of a small creek, 50 l'ks wide; runs south.
80.00 ch.—117 mile. This mile rolling prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—118 mile. This mile flat prairie; soil 2d-rate. May 15, 1832.
S. 75 W. 80.00 ch.—119 mile. This mile flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—120 mile. This mile flat prairie; soil 1st-rate.
173 S. 75 W. 59.00 ch.—To the NE. bank of a creek, 70 l'ks wide; runs SE.
80.00 ch.—121 mile. This mile rolling prairie; soil 1st-rate. May 16, 1832.
S. 75 W. 80.00 ch.—122 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—123 mile. This mile flat prairie; soil 2d-rate.
S. 75 W. 80.00 ch.—124 mile. This mostly a pond of water.
S. 75 W. 25.00 ch.—Struck a small grove of timber, 10.00 chs. across, where struck the pond again, which was 30.00 across.
80.00 ch.—125 mile. This mostly ponds.

S. 75 W. 80.00 ch.—126 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—127 mile. This mile flat prairie; 1st-rate.
S. 75 W. 80.00 ch.—128 mile. This mile flat prairie; 1st-rate.
S. 75 W. 80.00 ch.—129 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 80.00 ch.—130 mile. This mile flat prairie; soil 1st-rate.
S. 75 W. 40.00 ch.—To the east bank of the second or upper fork of the Des Moines; 150 l'ks wide; runs SW. May 17, 1832. The 18th spent in examining down to the junction of this fork with the main river Des Moines. Finding I had fell north of the aforesaid fork, proceeded as follows:
S. 15 E. 300.00 ch.—thence
S. 75 W. 165.00 ch.—thence
S. 15 E. 25.00 ch.—thence
S. 75 W. 96.00 ch.—To the upper or second fork of the river Des Moines, making the length of the random line equal to a 133 miles, 36 chs.; fell 4 miles and 5.00 chs. northerly of said fork, making the true line 133 miles and 43 ch. from the source of the left-hand fork of the upper Ioway River to the upper or second fork of the river Des Moines, where established a corner on the east side, and at the junction of said fork with the river Des Moines, and by planting a post in prairie at high-water mark, from which a red elm, 24 inches in diameter, bears N. 69 W. 341 links distant, standing on the east side of said fork, marked thus, "U. S.," and a red elm, 12 inches in diameter, bears S. 78 E. 934 l'ks distant, standing on the east bank of the river Des Moines, and on the SW. side of a natural mound of from forty to fifty feet in width at the base, and ten feet in height. Immediately opposite this tree and mound is the head or upper point of an island. The main
174 channel of the river passes on the east side of this island. The last-mentioned bearing tree marked thus, "U. S. May 19, 1832." The true line running from this to the head of the left-hand fork of the Ioway river, bears N. 73° 15′ E. At this corner the river is 420 l'ks wide, runs S. 77 E. for a short distance. The fork bears N. 15 E. in ascending it.

* * * * * * *

I certify that the foregoing notes, on pages one to seventy-seven, inclusive (one to fifty-eight this copy), are the original field-notes of the survey of the Indian boundary-line, as executed under the 2d article of a treaty made with the Sacs, Foxes, and Sioux Indians, on the 19th August, 1825, and 15th July, 1830; and that the lines, courses, and distances were all taken with my compass set at a variation of nine degrees east.

INDIAN OFFICE, August 7, 1832.

NATHAN BOONE,
Deputy Surveyor.

Notice of the filing of this motion was served upon the plaintiffs' attorney and upon the clerk on the 19th day of February, 1878.

On the 4th day of March, 1879, being the ensuing March term of the district court of Humboldt County, Iowa, plaintiffs filed the following objections and affidavits upon the motion for a new trial:

Objections by plaintiffs to the map offered by defendant on motion for new trial.

The plaintiffs objected to the map above mentioned being received in

evidence on the defendant's motion for a new trial upon the following grounds:

I. Said map, so far as it relates to the Indian reservations, is immaterial and incompetent.

II. Said map is not an historical or scientific work; nor is it a matter of contemporaneous history or record, so far as it relates to the Indian reservations.

III. Said map is not a public record made, kept or filed by authority of law.

IV. Said map shows upon its face that it was made long after the Indian reservations were extinguished, and that it seeks to modify and change said reservations as they were recognized and existed in fact during their occupation by the Indians, by drawing arbitary lines more than twenty-five years after the reservations ceased to exist.

V. Said map, as to the Indian reservations west of the Des Moines River, does not purport to be founded upon any official or other
175 survey of such reservations, and the pretended data upon which the boundaries of said reservations are drawn on said map are suppressed and withheld.

VI. It is not competent for a public officer to certify on a map or otherwise his conclusion as to what the records of his office show. The records must be certified, that the court may determine what they show.

VII. Said map does not purport to show with accuracy the boundaries of the reservations west of the Des Moines River, and is therefore of no value as to the lands in controversy.

VIII. Said map shows upon its face that as to the Indian reservations it has been made after final decree in this suit, for the purpose of changing, by arbitrary and theoretical lines, the Indian reservation material to this cause as it existed in fact. Such theoretical and arbitrary lines cannot be received to vary the fact or show what the fact was.

HUBBARD & CLARK,
Attorneys for Plaintiff.

Affidavit in resistance of motion for new trial.

STATE OF IOWA,
Humboldt County, ss:

I, Charles A. Clark, being duly sworn, depose and say: I am attorney for plaintiffs in this cause; I tried this suit for plaintiffs at the September (1878) term of this court; at that term Hon. C. C. Nourse appeared and tried the cause for defendants; before the trial was commenced I submitted to Judge Nourse all of the documentary evidence offered on the trial on behalf of the plaintiffs, including the maps, charts, and reports showing the Indian reservation, and Judge Nourse then had a fair opportunity to determine whether he would go to trial or ask for a continuance; after examining my evidence, he went to trial.

CHAS. A. CLARK.

Subscribed and sworn to this 4th day of March, 1879.

CARLOS COMBS, *Clerk, &c.*

Affidavit in resistance of motion for a new trial.

STATE OF IOWA,
Dubuque County, ss:

I, C. H. Booth, being duly sworn, depose and say: I reside at Dubuque, Iowa; my age is years; from February, 1849, up to April, 1851, I was United States surveyor-general for the States of Wisconsin and Iowa and for the Territory of Minnesota, and during that period I had charge of the United States Government land surveys in said States and Territory; that the boundaries of the Sioux Indian reservation, under the treaty of Aug. 15, 1830, were never established and defined by actual survey west of the Des Moines River, to the knowledge or information of this affiant. That the maps accompanying my reports for the years 1849 and 1850 to the Commissioner of the General Land Office of the United States at Washington were made from the most correct and reliable data that at
176 that time could be procured by me; and that the stream now known as the Lizard, which flows into the Des Moines River a little north of the second correction line, was then supposed to be the upper fork of the Des Moines River, mentioned in said treaty of Aug. 15, 1830. That the south boundary-line of the Sioux Indian reservation as it then existed in fact, and was then recognized by the United States land department and the Sioux Indians, is laid down with substantial accuracy on said maps. That the Sioux Indians were, at the date of my said reports and maps, in possession of the territory west of the Des Moines as far south as the mouth of the stream known as the Lizard, as shown on my said maps, and this occupation was acquiesced in by the United States land department, and the mouth of the Lizard was the south boundary-line of the reservation in fact. That the geographical features of the country west of the Des Moines River and north of the second correction line were not definitely known by the United States land department at the time of my said reports, and had been but little explored. That the second correction line was extended west of the Des Moines River during the year 1849, and the surveying party engaged in extending said line, when encamped on the Lizard, near to its mouth, were attacked by the Sioux Indians and their encampment broken up. Further affiant saith not.

C. H. BOOTH.

Subscribed and sworn to this 28th day of February, 1879, before me.

J. M. WARNER,
Dep'ty Cl'k of Dist. C't Dubuque Co., Iowa.

The motion for a new trial was submitted to the court upon the affidavits, map, and documents as above specified—parties referring also to the evidence and exhibits upon which the cause had been tried as set forth in the foregoing record.

The court having heard said motion, overruled the same, to which the defendant duly excepted.

Defendant served the following

Notice of appeal.

To said plaintiffs or their attorneys, and the clerk of the district court of Humboldt County, Iowa:

You, and each of you, are hereby notified that the defendant in the above-entitled cause has appealed from the decree of the district court of

said Humboldt County, Iowa, rendered in said cause, and also from the ruling of said court upon the motion for a new trial and to set aside said decree, and that said appeal is to the next term of the supreme court of the State.

NOURSE, KAUFFMAN & CO.,
Attorneys for Defendant.

March 5, 1879. We acknowledge service of this date of the above notice.

CHAS. A. CLARK,
Attorney for Plaintiffs.
CARLOS COMBS,
Clerk District Court.

177 WASHINGTON, *November* 1, 1860.

Hon. JACOB THOMPSON,
Secretary of the Interior:

SIR: I have the honor to acknowledge the receipt of your communication of the 1st ultimo, inclosing copy of the decision of the 6th September last, on my application for approved lists of the railroad selections within the interfering limits of the old Des Moines River grant claim in Iowa.

In behalf of the Dubuque and Pacific Railroad Company (now known as the Dubuque and Sioux City) I beg leave to file the inclosed lists and maps marked "A" and "B," just received from the officers of that road, duly authenticated by the register of the State land office, under the seal of State, and showing all the tracts actually sold by the State within the interfering limits of said road.

With a sincere desire to meet the views of the Department, and judging from all the past correspondence on this subject that it only seeks in withholding the approved lists to extend temporary protection to those who have purchased from the State whilst they are looking to Congress for relief, I respectfully propose on behalf of the railroad company to limit the suspension of the tracts sold by the State as shown by the limits herewith, and only ask the approval of the balance of the lands to the road, or so much thereof as may be found due to the grant. This will also include the 31,684.59 acres west of the river opposite Fort Dodge, not embraced in the erroneous river lists alluded to in your communication to me of the 1st ultimo as not falling within your objections or probably those of the Commissioner. I would not press this matter on the Department were it not, at this juncture, important that the railroad company should early be put in possession of these lands, upon which their calculations are in part based for the completion of one hundred miles of their line of road, of which I understand eighty miles have been completed and the last twenty miles are now being constructed; and in the confidence that the Department will not throw any unnecessary impediment in the way of a company acting in good faith, as this one appears to be, with the Government and its creditors, by withholding such an important source from which to derive the means to prosecute their undertaking and comply faithfully with all the conditions and limitations of the grant.

I therefore hope my proposition will be favorably entertained.

I am, with great respect, your ob't serv't,

WM. T. STEIGER, *Agent, &c.*

178 In the supreme court of Iowa. December term, 1879.

THE DUBUQUE & SIOUX CITY R. R. CO., AND the Iowa Homestead Co.
vs.
THE DES MOINES VALLEY R. R. CO.
} Appeal from Humboldt district court.

Chas. A. Clark, attorney for plaintiffs; Nourse, Kauffman & Co., attorneys for defendant.

ADDITIONAL ABSTRACT.

The following is a caption appearing of record to list of lands printed on page 51 of abstract:

List of lands situate outside the six-mile and inside the fifteen-mile limits of the Dubuque & Pacific Railroad, which have been sold by the State of Iowa, as part of the lands granted by act of Congress, approved 8th August, 1846, making a grant for the purpose of aiding the improvement of the navigation of the Des Moines River.

The following certificate is appended also to said list;

STATE OF IOWA, STATE LAND OFFICE,
Des Moines, 11th September, 1860.

I, Amos B. Miller, register of the Iowa State land office, do hereby certify that I have compared the above list with my official records, and that the same is a complete and correct list of all of the lands situate outside of the six-mile and inside of the fifteen-mile limits of the Dubuque &
179 Pacific Railroad, which have been sold by the State of Iowa as part of the lands granted to the State by act of Congress, approved 8th August, 1846, for the purpose of aiding the Territory of Iowa to improve the navigation of the Des Moines River; also that the same lands are shown on the map hereto annexed.

A. B. MILLER,
Register State Land Office.

The following is a caption appearing of record to list of lands printed on page 52 of abstract:

List of lands situate inside the six-mile limits of the Dubuque & Pacific Railroad, which have been sold by the State of Iowa as part of the lands granted by act of Congress, approved 8th August, 1846, making a grant for the purpose of aiding the improvement of the navigation of the Des Moines River.

The following certificate is appended also to said list:

STATE OF IOWA, STATE LAND OFFICE,
Des Moines, Eleventh September, 1860.

I, Amos B. Miller, register of the Iowa State land office, do hereby certify that I have compared the annexed list with my official records and that the same is a complete and correct list of all the lands situate inside

of the six-mile limits of the Dubuque & Pacific Railroad, which have been sold by the State of Iowa as part of the lands granted to the State by act of Congress, approved 8th August, 1846, for the purpose of aiding the Territory of Iowa to improve the navigation of the Des Moines River; also that the same lands are shown on the map hereto annexed.

A. B. MILLER,
Register of the State Land Office.

On page 88 of the abstract add, after the figures "480,929.21" the words, "First certified December 27, 1858. Taking said lands clean from east to west, at the rate of six sections per mile of railroad built, the lands in controversy are earned, if within plaintiff's grant, by building the sections of railroad certified to on pages 86 and 87 of the abstract."

Copies of map No. 1, referred to on page 51 of this abstract; of map No. 2, referred to on page 68; of maps Nos. 4, 5, 6, and 7, referred to on page 70; of maps Nos. 8, 9, and 10, referred to on page 97; of maps Nos. 11 and 12, referred to on page 158; of maps Nos. 14 and 15, referred to on pages 51 and 52, and maps referred to in certificates of A. B. Miller, register, on pages 1 & 2 "additional abstract," being maps 180 Nos. , are all contained in the book of maps filed herein, and are all to be taken as a part of the abstract and of the record of this case. What said maps show is to be determined by an examination thereof, and is in no manner controlled by the description thereof in the abstract.

A certified copy of the following letter:

GENERAL LAND OFFICE, *June* 13, 1850.

SIR: By the act of 8th August, 1846 (acts 1st session 29th Cong., p. 115), there was granted "to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called) in said Territory, one equal moiety in alternate sections of public lands (remaining unsold and not otherwise disposed of, encumbered, or appropriated) in a strip five miles in width on each side of said river, to be selected within said Territory," &c.

By the 4th section of that act, it is directed, "That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State, for the purpose contemplated in this act and no other; provided the legislature of the State of Iowa shall accept the said grant for the said purpose."

This grant is for the improvement of the Des Moines River, from its mouh to the Raccoon Fork; and the restriction, that the selections should be made "within said Territory," was intended to prevent the grant from attaching to lands in Missouri, on the south side of the river, near its mouth.

One of the chief considerations that has always induced Congress to make these grants of alternate sections, along an improvement of this kind, is, that the lands retained by the United States are greatly enhanced in value by the improvement, and hence, in making some of those grants, the minimum price of the alternate sections retained by the Government has been doubled.

In this view of the case there cannot be a doubt of the extent of the grant as intended by the law, and the language used would seem to be sufficiently clear to limit the northern terminus of the grant to the Raccoon Fork. If, however, there should be any ambiguity in the case, the proper and usual course to ascertain the meaning and intent of the legislature is to refer to the facts and documents on which it was passed and its contemporaneous exposition.

By that reference it will be perceived that the first section of the House bill No. 106, 1st sess. 29th Congress, copy herewith marked "A," which was the basis of the act above mentioned, and which appears by the report of the committee to have been introduced by the Hon. A. C. Dodge, and was no doubt prepared by him, is precisely in the same terms with that act and contains the entire granting clause of it.

181 While this bill was pending before the Committee on Public Lands of the House of Representatives, to wit, on the 5th May, 1846, application was made to this office, by the Hon. A. C. Dodge, who introduced it, for an estimate of the area of the grant proposed by it. In making that estimate, which is appended to Report No. 680, House of Reps., 1st sess. 29th Cong., and forms part of it, the Raccoon Fork of the Des Moines was regarded as the northern boundary of the grant.

The Committee on Public Lands of the House of Representatives, in reporting the bill before mentioned, making this grant, evidently regarded the grant as extending only to the Raccoon Fork. The explorations and reports of the engineers, referred to, and the improvement of the stream suggested by them are all below that fork.

The committee state in that report (No 680, herewith, marked "B"), that "the grant of land provided by the bill which accompanies this report, is similar in its character and object to many heretofore made by Congress to several of the Western States and Territories."

In no case, that I am advised of, has a grant extended beyond the improvement for which it was made, and hence, if this language of the committee means anything, it is that the grant in this case extends only to the Raccoon Fork, as it is admitted by all that the law recognizes that as the northern terminus of the improvement.

The committee further state that the grant is less in amount than many heretofore made by Congress to several of the Western States and Territories, but it is believed will be sufficient to accomplish the desired improvement.

The only information before the committee as to the amount of this grant, was the letter from this office of the 5th May, 1846, to the Hon. A. C. Dodge, which the committee appended to and made part of their report, and which is in the following words, to wit:

GENERAL LAND OFFICE, *May 5th*, 1846.

SIR: In answer to your inquiry I have the honor to state that the amount of unsold land within five miles on each side of the Des Moines River, from its mouth to the Raccoon Fork, proposed to be granted to the Territory of Iowa, by House bill No. 106, is estimated at 261,000 acres. There have been sold in the Territory of Iowa, to the first of January, 1846,

1,730,000 acres, and the amount of purchase-money received by the United States to the same date, is $2,164,102.

Very respectfully, your ob't serv't,

JAS. SHIELDS, *Commissioner.*

Hon. A. C. DODGE,
House of Reps.

This letter, as stated, was written to the Hon. A. C. Dodge, who introduced the bill, and who must have laid it before the committee. In this letter it is clearly and distinctly stated that the grant extends from the mouth of the river to the Raccoon Fork, and the area of the grant thus bounded is stated to be 261,000 acres.

182 The committee in thus referring to the amount of the grant, evidently recognized and adopted the boundaries of it, as specified in this letter. Moreover, their statement, that this grant was less in amount than many heretofore made to several of the Western States and Territories, was erroneous, if the grant be regarded as extending above the Raccoon Fork to the source of the river—as the land north of the Raccoon Fork, now claimed by the State under the grant, is estimated to amount to 900,000 acres, making the whole grant for this purpose 1,161,000 acres, which, with the 500,000 acres granted by the act of 4th September, 1841, would make the entire grant to this State for internal improvements 1,661,000 acres, or more in extent than that to any other State or Territory.

The committee state that this grant, though less in amount, &c., it is believed will be sufficient to accomplish the desired improvement. No doubt would have existed on this subject, in the minds of the committee, had they supposed that this grant included 1,161,000 acres, instead of 261,000, as reported to them; but there is some doubt whether they would have reported the bill had they been so advised, as the limited amount reported as covered by the grant seems to have been one of the inducements that caused the committee so to report it.

The Hon. A. C. Dodge, in receiving from this office the letter of 5th May, 1846, above mentioned, which expressly states that the amount of unsold land within five miles on each side of the Des Moines River, from its mouth to the Raccoon Fork, proposed to be granted to the Territory of Iowa by House bill No. 106, is estimated at 261,000 acres, was expressly notified by that letter that the grant was construed by this office as limited on the north by the Raccoon Fork, and in placing that letter before the committee he adopted and sanctioned that construction, and the committee in reporting the bill introduced by him, with this construction, were no doubt satisfied that they were carrying out the intention of its author.

In issuing instructions under this act of 1846, the same view was taken as to the extent of it, that is, that it was limited on the north by the Raccoon Fork, as will be seen by reference to the letter from this office to his excellency James Clark, governor of Iowa, of 17th Oct. 1846, in which it is held that "under this grant the Territory is entitled to the vacant lands in the alternate sections, within five miles on each side of the Des Moines River, from Sullivan's line, the northern boundary of Missouri, to the Raccoon Fork of the Des Moines river." (Doc. C.)

No objection was made to this construction at the time, so far as I am

advised, but on the contrary, with the notification of it in the hands of the governor, the general assembly of the State of Iowa, on the 9th January following, by resolution accepted this grant, and by act of 24th February following, created a board of public works, and provided for the improvement of the Des Moines River—all without any protest against or objection to this construction.

With the letter of 17th October, 1846, above mentioned, from this office to the governor of the State, a diagram showing the extent of the
183 grant was also sent (see Doc. C.); and in replying to that letter and advising this office that the State had selected the vacant lands within the odd-numbered sections, no objection was made by the agent of the State to the Raccoon Fork being the northern boundary of the grant, as therein specified, nor by the governor, in a similar letter of 12th of January, 1847 (see Docs. D and E), and the grant was accordingly closed to that point.

Thus it is seen that the Delegate from Iowa, who was the author of the bill, the committee who reported it, this office, both before and after its passage, and the executive of Iowa, all concurred in recognizing the Raccoon Fork as the northern boundary of the grant, and acted on that assumption; and the matter seemed thus to rest, finally settled and disposed of, till nearly two years after the passage of the bill, when, on the 23d February, 1848, without any request from any source, so far as the records of this office show, a letter was addressed by my predecessor to Charles Corkery, esq., secretary to the board of public works of Iowa, in which it is stated that a question has arisen as to the extent of this grant, and that in his opinion the State is entitled to the alternate sections within five miles of the Des Moines River, throughout the whole extent of that river, within the limits of Iowa. (See copy of his letter, Doc. F.) No action, however, was had under this view, except the letter to Mr. Corkery, above mentioned; and by the letter of 8th January, 1849, from the Iowa delegation, it appears that my predecessor afterwards changed his opinion on this point, and became satisfied that the first construction, limiting the grant to the Raccoon Fork was correct. Without any official communication of the reversal of his opinion, given on the 23d February, 1848, above mentioned, the surveyed lands above the Raccoon Fork, on the Des Moines River, were brought into market by the proclamation of President Polk, of 19th June, 1848, countersigned by my predecessor, directing the sale of these lands to commence on Monday, the 16th October, 1848, which proclamation was published in the following papers in Iowa, to wit: The State Gazette, at Burlington, the Miners' Express, at Dubuque, Capital Reporter, at Iowa City, Dispatch, at Keokuk.

In consequence of these lands being thus brought into market, about 25,000 acres of the odd-numbered sections above that point were sold or entered by pre-emption or military warrants, which would have been embraced by the grant if it had been regarded as extending above that fork.

No objection was made to the sale of those lands, so far as shown by the records or files of this office, by the authorities of Iowa, or any person for them, till the 8th January, 1849, when the Iowa delegation in Congress addressed a letter to the Secretary of the Treasury, asking his consideration of the subject, and that he would give the necessary instructions for the selection and approval of the lands under the grant, along the entire

route of the Des Moines, as they contended the State was entitled under the act. (See copy herewith, marked "G," together with an argument on the same subject, marked "H.")

184 Under this application it does not appear that this office was called on for or made any report on the subject to the Secretary, nor that any of the papers in the case, nor the report of the Committee on Public Lands were before him at the time he examined it; nor was there any appeal made through this office.

On the 2d March, 1849, the Secretary of the Treasury inclosed to this office the papers laid before him by the Iowa delegation above mentioned, with a copy of a letter which he informed this office he had addressed to the members of that delegation (see copies herewith, marked "I" and "K"), which were received on the 3d March, 1849. In that letter the Secretary expresses the opinion "that the grant in question extends on both sides of the river, from its source to its mouth, but not into lands on the river, in the State of Missouri."

Under this opinion, the claim of the State above the Raccoon Fork interfered with the entries by pre-emption and otherwise, as already stated; and this office held that those entries, under the circumstances, were legal. On the 13th March, 1850, on an appeal by the Senators from Iowa, communicated on the 16th March, 1850 (Doc. L), the question was submitted to the Secretary of the Interior whether the entries thus interfered with were to be regarded as illegal, and the odd-numbered sections, above the Raccoon Fork, should be approved and certified to the State, in accordance with the selections made by the State below that fork.

The whole papers in the case were also submitted, with a copy of the bill as originally introduced, and of the report of the Committee on Public Lands of the House of Representatives on that bill.

On the 6th April, 1850, the Secretary of the Interior replied as follows, to wit:

"DEPARTMENT OF THE INTERIOR,
"*Washington, April 6*, 1850.

"SIR: Having considered the questions submitted to me connected with the claim of the State of Iowa to select, under the act of Congress of August 8, 1846, lands for the improvement of the Des Moines River, I am clearly of opinion that you cannot recognize the grant as extending above the Raccoon Fork without the aid of an explanatory act of Congress. It is clear to my mind, from the language of the act of August 8, 1846, itself, that it was not the intent of the act to extend it further. My construction is confirmed by the report of the committee and the accompanying papers. If in any report to Congress you have recognized the grant as extending to the source of the river, it will be proper to correct it, that Congress, if they see fit, may extend the grant.

"The opinion expressed by the late Secretary of the Treasury on the subject is entitled to great respect, but I cannot concur in it; and the law not having been carried into effect by him, his opinion, merely expressed, is open for revision.

"The lists of selections and other papers submitted with your letter of the 13th ultimo are herewith returned.

185 "As Congress is now in session and may take action on the sub-

ject, it will be proper, in my opinion, to postpone any immediate steps for bringing into market the lands embraced in the State selections.

"I am, sir, very respectfully, your ob't serv't,

"T. EWING, *Secretary.*

"The COMMISSIONER OF THE GENERAL LAND OFFICE."

All which is most respectfully submitted, with the other papers in the case.

With great respect, your ob't serv't,

J. BUTTERFIELD,
Commissioner.

P. S.—As explanatory of this subject, I inclose a diagram of the State of Iowa, marked "M," on which the grant below the Raccoon Fork, as recognized and settled, is colored red; the lands above, claimed by the State, as far as surveyed, are fully colored blue, and the supposed boundaries of the claim above the surveyed lands are represented by blue lines.

J. B.

Hon. THOS. EWING,
Secretary of the Interior.

It is hereby stipulated and agreed that the foregoing abstract and additional abstract, with book of maps, from No. 1 to No. 15, with maps referred to in writing on page 2 of additional abstract, inclusive, filed herewith, constitute a correct abstract in the case, and a transcript of the record is waived.

(Signed) NOURSE, KAUFFMAN & Co*t*,
For Def't & App'll't.
HUBBARD & CLARK,
For Pl't's & Appellees.

OCT. 1, '79.

186 An' afterwards, to wit, on the 7th day of October, A. D. 1879, there was filed in the office of the said clerk of the supreme court of Iowa a certain book of maps from No. 1 to No. 15, inclusive, as follows:

(Here follows book of 15 maps.)

Maps Nos. 3, 5, 7, 8, & 9 are the only maps placed in the printed record by direction of counsel for the plaintiffs in error.

CLERK SUP. COURT, U. S.

187 THE D. & S. C. R. R. CO. ET AL.
vs.
THE DES MOINES VALLEY R. R. CO.

And afterwards, to wit, on the 19th day of March, 1880, the following record entry appears:

2303——11

ject, it will be proper, in my opinion, to postpone any immediate steps for bringing into market the lands embraced in the State selections.

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2303——11

THE D. & S. C. R. R. CO. AND IOWA HOMESTEAD CO.
vs.
THE D. M. VALLEY R. R. CO., APP'L'T.

Appeal from Humboldt district court.

On this day this cause is submitted to the court on printed and oral argument.

188 THE D. & S. C. R. R. CO. AND IOWA HOMESTEAD CO.
vs.
THE D. M. VALLEY R. R. CO., APP'L'T.

And on the 16th day of June, 1880, appears the following record entry, to wit:

THE DUBUQUE AND SIOUX CITY R. R. CO. and IOWA HOMESTEAD CO.
vs.
THE DES MOINES VALLEY R. R. CO., appellant.

Appeal from Humboldt district court.

And now this cause coming on for a final decree in pursuance of the opinion of the court heretofore filed, after argument by counsel and the full submission of the cause upon the record and abstracts filed herein, it is ordered, adjudged, and decreed by the court that the decree of the district court of Hamboldt County, heretofore rendered in this cause, be, and the same is thereby, reversed and set aside.

And it is further ordered and adjudged that the equities of this
189 cause and the title to the real estate in controversy and set forth and described in plaintiff's petition is and of right ought to be in the said defendant, the Des Moines Valley Railroad Company, and its grantees or assigns, and that the bill of complaint or petition of the said Dubuque & Sioux City Railroad Company and the Iowa Homestead Company be, and the same is hereby, dismissed on the merits.

It is further ordered and adjudged that the def't, the Des Moines Valley Railroad Company, have and recover its costs in this behalf expended, including the costs of the district court, taxed at dollars, and that execution issue therefor.

It is further ordered that a copy of this decree be certified to said district court of Humboldt County; and that the same be entered of record in said court. And on said day the court made the following certificate, to wit: And the court doth hereby certify that on the trial and final hearing of this suit herein the complainants, the Dubuque and Sioux
190 City Railroad Company and the Iowa Homestead Company, specially claimed title and right to the lands described in the pleadings, under certain treaties and statutes of the United States, and under authority exercised under the United States by officers of the Land De-

partment of the United States Government; and that the decision herein is against the title and right specially set up and claimed by said complainants under certain treaties and statutes of the United States, and under authority exercised under the United States by officers of the Land Department of the United States Government.

(Signed) AUSTIN ADAMS,
Chief-Justice of Supreme Court of Iowa.

191 THE DUBUQUE AND SIOUX CITY R. R. Co. et al.
vs.
THE DES MOINES VALLEY RAILROAD COMPANY.

And on this 26th day of July, 1880, appears the bond in said case, in words and figures as follows, to wit:

Supreme Court of the United States.

THE DUBUQUE AND SIOUX CITY RAILROAD Company and the Iowa Homestead Co.
vs.
THE DES MOINES VALLEY RAILROAD COMPANY.

Know all men by these presents that we, the Dubuque and Sioux City Railroad Company and the Iowa Homestead Company, and John Weare & C. H. Booth, of Cedar Rapids, Linn County, Iowa, are held and firmly bound with the Des Moines Valley Railroad Company in the sum of five thousand dollars, to be paid to the said Des Moines Valley Rail-
192 road Company, its successors or assigns. To which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and the heirs, executors, and administrators of the said John Weare & C. H. Booth, firmly by these presents. Sealed with our seals. Dated this 7th day of July, A. D. 1880.

Whereas the above-named Dubuque and Sioux City Railroad Company and the Iowa Homestead Company have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled action by the supreme court of the State of Iowa:

Now, therefore, the condition of this obligation is such that if the above-named Dubuque and Sioux City Railroad Company shall prosecute their said writ of error to effect, and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(SEAL OF D. & S. C. R. CO.) THE DUBUQUE & SIOUX CITY RAILWAY CO'Y,
By MONESK JESUP, *Pres't.*

193 C. H. BOOTH, *Sec'y.*
[SEAL I'A H. CO.] THE IOWA HOMESTEAD COMPANY,
By J. B. DAMONT, *Sec'y & Treasurer.*
JOHN WEARE, *Surety.* [SEAL.]
C. H. BOOTH, *Surety.* [SEAL.]

This bond accepted and approved to operate as a supersedeas, and writ allowed this 20th day of July, 1880.

AUSTIN ADAMS,
Chief-Justice of the Supreme Court of Iowa.

194 THE DUBUQUE & SIOUX CITY R. R. Co. et al.
vs.
THE DES MOINES VALLEY R. R. Co.

And on the 26th day of July, 1880, there was filed in this cause the original writ of error in words and figures as follows:

195 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in the said supreme court of the State of Iowa, before you, being the highest court of law or equity of said State in which a decision could be had in the said suit between the Dubuque and Sioux City Railroad Company and the Iowa Homestead Company, plaintiffs, and the Des Moines Valley Railroad Company, defendants, wherein was claimed by the said plaintiffs certain rights and title under certain treaties and statutes of the United States and under authority exercised under the United States, and the decision was against the rights and title specifically set up or claimed under the treaties, statutes, and authority aforesaid, a manifest error hath happened to the great damage of the said Dubuque and
196 Sioux City Railroad Company and Iowa Homestead Company, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceeding aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the
197 Supreme Court of the United States, the third day of July, A. D. 1880.

[SEAL.] EDWARD R. MASON,
Clerk U. S. C. C., Dist. of Iowa.

Allowed. AUSTIN ADAMS,
Chief-Justice of the Supreme Court of the State of Iowa.

Due and legal service of the above writ of error and copy thereof accepted this 26th day of July, A. D. 1880.

NOURSE, KAUFFMAN & JACKSON,
Att'ys for Defendant.

(Indorsed:) The Dubuque & Sioux City R. R. Co. et al. vs. The Des Moines Valley R. R. Co. Writ of error. Filed July 26, '80. E. J. Holmes, clerk sup. court.

198 THE DUBUQUE & S. C. R. R. CO. ET AL.
vs.
THE DES MOINES VALLEY R. R. CO.

And on this 26th day of July, 1880, the citation in this cause was filed, with proof of service of same.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Des Moines Valley Railroad Company, defendant in error:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the supreme court of Iowa, wherein the Dubuque and Sioux City Railroad Company and the Iowa Homestead Company are plaintiffs in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in the said writ of error mentioned should
199 not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Austin Adams, chief-justice of the supreme court of Iowa, this 20th day of July, 1880.

AUSTIN ADAMS,
Chief-Justice of the Supreme Court of Iowa.

Due and legal service of within citation and copy thereof accepted this 26th day July, A. D. 1880.

NOURSE, KAUFFMAN & JACKSON,
Att'ys for Defendant.

200 THE DUBUQUE & S. C. R. R. CO. ET AL.
vs.
THE DES MOINES VALLEY R. R. CO., APPELLANT.

And on the 16th day of June, 1880, an opinion was filed in words and figures as follows, to wit:

THE DUBUQUE & SIOUX CITY RAILWAY CO. et al.
vs.
THE DES MOINES VALLEY R'Y CO., APPELLANT.

Appeal from Humboldt district court.

This action was commenced in 1876, to quiet the title to about 10,000 acres of land in Humboldt and Pocahontas Counties.

The petition alleges that the lands were granted by the Congress of the United States to the State of Iowa, by the act of May 15th, 1856, for the purpose of aiding in the construction of a railroad from Du-
201 buque to a point on the Missouri River, near Sioux City; that the lands were accepted by the State, by an act of the general assembly, approved July 14, 1856, and by the same act conferred upon the Dubuque & Pacific Railroad Company, which duly accepted the grant, and proceeded to so locate the line of its road; that the lands in controversy enured to it under these grants, and were duly selected thereunder, and that the plaintiffs, The Dubuque & Sioux City Railroad Company, and The Iowa Homestead Company, have respectively acquired portions of the lands in controversy by conveyances set out in the pleadings which need not be more particularly referred to here. It is also shown that the lands in question have been earned by the construction of the railroad required to be built by the grants of Congress and the State, and have been duly certified to the State by the proper officers of the General Government under the Congressional grant. The petition charges that the def't, The Des Moines Valley Railroad Company, claims under the act of Congress of
202 July 12th, 1862, confirming a grant of lands to the State for the improvement of the navigation Des Moines River, by act of Congress of August 8th, 1846, and that its officers and agents have procured from the Secretary of the Interior and the Commissioner of the General Land Office an illegal certification of the lands in controversy to the State under the grant of July 12th, 1862, which will enure to the benefit of the def't, that corporation having acquired the lands under a grant from the State. The plaintiffs pray that the title of the lands by a proper decree be quieted in them.

The def't in its answer claims that the lands in controversy were reserved by the proper officers of the United States under the act of Congress August 8th, 1846, granting lands for the improvement of the Des Moines River, and were therefore by the express terms of the acts of Congress of May 15th, 1856, excepted from the grant under which plt'fs claim, and that the lands were granted and confirmed to the State by the act of Congress of July 12th, 1862, and have been so listed and entered and certified by the proper officers of the General Gov-
203 ernment. The answer sets out the legislation under which def't claims as the grantee of the State, which need not be recited here.

Upon a trial on the merits the district court entered a decree as praved for in pl't'ffs petition, quieting the title of the lands in pl't'ffs. The def't appeals. The facts of the case, so far as they are necessary for a proper understanding of the points ruled in the opinion, appear therein.

Nourse, Kauffman & Jackson, for appellants; Charles N. Clarke, for appellees.

BECK, *J.*:

I. This case involves the consideration of two grants of lands by the Congress of the United States, each of which it is insisted by the parties claiming thereunder covers the lands in controversey. The first of these grants was made to the State for the purpose of improving the navigation of the Des Moines River; the second was to aid in the construction certain

railroads. Pl't'ffs claim under the second grant; def't under the
204 first. It is not necessary, in the view we take of the case, to set out the chain of title of either party, as it may be conceeded for the purpose of our discussion that if the lands are covered by the first grant def't holds title thereto; if by the second, the pl't'ffs are entitled to the lands.

It becomes necessary to set out the legislation by Congress making these grants, and to some extent the legislative history of each.

The act of Congress approved August 8th, 1846, granting lands for the improvement of the navigation of the Des Moines River, is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to said Territory of Iowa for the purpose of aiding said Territory to improve the navigation of the Des Moines River from its mouth to the Raccoon Fork (so called) in said Territory, one equal moiety in alternate sections of the public lands (remaining unsold and not otherwise disposed of, encumbered or appropriated) in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or
205 agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States.

SECTION 2. And be it further enacted, That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvements shall progress; that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sales shall cease until the governor of said Territory or State shall certify the fact to the President of the United States that one-half of said sum has been expended upon said improvements, when the said Territory or State may sell and convey a quantity of the residue of said lands sufficient to replace the amount expended; and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

SEC. 3. And be it further enacted, That the said river Des Moines shall be and forever remain a public highway for the use of the Govern-
206 ment of the United States, free from any toll or other charge whatever, for any property of the United States or person in their service passing through or along the same; provided, always, that it shall not be competent for the said Territory or future State of Iowa to dispose of said lands, or any of them, at a price lower than, for the time being, shall be the minimum price of other public lands.

SEC. 4. And be it further enacted, That whenever the Territory of Iowa shall be admitted into the Union as a State the lands hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this act, and for no other; provided, the legislature of the State of Iowa shall accept the said grant for the said purpose.

This statute was, prior to 1859, often before the executive department of the General Government for construction, touching the extent of the grant or the territory to which it was applicable. The lands in controversy are above or north of the Raccoon Fork of the Des Moines River.

It was sometimes held that the grant was restricted to territory
207 below the Raccoon Fork, and quite as frequently decided that it extended to the territory above. For more than ten years there was oscillation in the views of the different executive officers of the Government upon the subject. Attorney-General Cushing, in an opinion upon the subject of the grant, addressed to the Secretary of Interior, May 29th, 1856, says: "The history of the case exhibits a spectacle of vacillation and contradiction of opinion on the part of the Government which is humiliating to contemplate." It is discreditable to the Government that its views of a law and its consequent action should be shifting about like a weather-vane, as they have done in this case. "While the opinions and views of the executive officers of the Government rested in this uncertainty, the grant came before the United States Supreme Court in the case of the Dubuque and Pacific Railroad Company of Litchfield, 23d How., 66. It was held by the Supreme Court in that case that the grant was confined to lands between the mouth of Des Moines River and
208 the Raccoon Fork. Up to this time the lands above the Raccoon Fork had been withheld from sale under the claim that the grant had been extended thereto.

After the decision of the Supreme Court was announced the lands above the Raccoon Fork were still reserved from sale.

By an act of Congress, approved July 12th, 1862, the claim of the State to lands above the Raccoon Fork, under the grant of Congress of August 8th, 1846, was confirmed, and the grant extended in conformity with the claim of the State. The statute is entitled "An act confirming a land claim in the State of Iowa, and for other purposes." It is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant of lands to the then Territory of Iowa for the improvement of the Des Moines River, made by the act of August eighth, eighteen hundred and forty-six, is hereby extended so as to include the alternate sections (designated by odd numbers) lying within five miles of said river between the Raccoon Fork
209 and the northern boundary of said State; such lands are to be held and applied in accordance with the provisions of the original grant, except that the consent of Congress is hereby given to the application of a portion thereof to aid in the construction of the Keokuk, Fort Des Moines and Minnesota Railroad, in accordance with the provisions of the act of the general assembly of the State of Iowa, approved March twenty-two, eighteen hundred and fifty-eight. And if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa under the joint resolution of March second, eighteen hundred and sixty one, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof: Provided, That if the said State shall have sold and conveyed any portion of the lands lying withing the limits of this grant the title of which has proved invalid, any lands which shall be certified to said
210 State in lieu thereof by virtue of the provisions of this act shall inure to and be held as a trust fund for the benefit of the person or persons respectively whose titles shall have failed as aforesaid."

Under this act the lands in question were certified to the State and un-

der legislation of the State they will, if they are covered by the grants as against pl't'ffs, enure to the def't. By act of Congress of May 15th, 1856, Congress granted to the State for the purpose of aiding in the construction of certain railroads "every alternate section of land designated by odd numbers for six sections in width on each side of said roads." Further provisions of the statute relating to the terms of the grant need not be set out. The first section contains the following proviso:

And provided further, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal
211 improvement, or for any other purpose whatever be, and the same are hereby, reserved from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only shall be granted subject to the approval of the President of the United States."

Under this grant the lands in controversy were certified to the State by the proper officers of the General Government. A subsequent certification of the land was made to the State, as enuring under the grant of July 12th, 1862, for the improvement of the Des Moines River.

The Supreme Court of the United States has thrice decided upon facts the same as those disclosed by the record before us, that the lands were conveyed to the State by the grant of July 12th, 1862, for the improvement of the navigation of the Des Moines river, and that they were expressly excepted from the railroad grant of May 15th, 1856, as they were at the time of the enactment reserved by competent authority for
212 the improvement of the Des Moines River.

Walcott vs. Des Moines Co., 5 Wal. 681.

Williams vs. Baker, 17 Wal. 144.

Homestead Co. vs. Valley R. R. Co., Id. 153.

That these decisions correctly interpret the act of May 15th, 1856, cannot be doubted. The legislative history of the statute disclose' the fact that the Committee on Public Lands of the House had before it estimates of the quantity of land which would pass by the act of May 15th, 1856, which excluded all the lands claimed under the grant for the improvement of the Des Moines River. It would thus appear that Congress enacted the statute with a full knowledge that these lands were reserved by competent authority for the improvement of the Des Moines River, and there can be no doubt that the proviso therein was intended to take the lands in question from the operation of the statute.

II. Counsel for pl't'ffs insists that this case does not come within the rules of the decisions of the United States Supreme Court just cited, for the reasons that there are other questions involved that
213 were not in those cases. These questions arise upon the following facts: 1. The lands involved in this case were not surveyed until after reservation under the river grant was made, and were not certified under that grant until after the grant to the state for railroad purposes. 2. The lands reserved under the river grant which are contemplated in the proviso incorporated in the railroad grant above quoted were along the east branch of the Des Moines River, and not along the main stream. 3. The lands in question were within the Sioux Indian reservation at the

date of the river grant, August 8th, 1846, and at the dates of the acts of the executive officers of the Government reserving the lands for the improvement of the river. We will proceed to consider the questions arising upon these alleged facts.

III. It is claimed, as a matter of fact, that the lands in controversy and other lands claimed under river grant were not surveyed until after the reservation under the river grant was made.

214 We understand that by this statement counsel mean to assent that the lands were not subdivided by what are called Congressional surveys, which are always made before public lands are put upon the market. The statement admits that the lands were reserved. If they were not surveyed so that they could have been sold it is difficult to see how they could have been reserved from sale. The statement of fact, if it contemplates a reservation from sales, is contradictory in itself. We know of no reason why lands may not be reserved by Congress or other competent authority for lawful purposes before they are surveyed. Indeed we think such cases have frequently occurred. That these lands were reserved for the river improvement in 1856, the date of the railroad grant, is settled by the decisions of the Supreme Court of the United States above cited. When such reservation was first made we need not inquire. It had been continued and was in existence in 1856, and the lands were then

215 surveyed. When the railroad grant was made the lands were reserved, and it matters not whether they were or were not surveyed when the reservation was first made. Under the proviso of that grant they were exempted as lands covered by an existing reservation.

IV. It is next argued that the river-improvement grant must fail as to these lands for the reason that they were not certified to the State until after the railroad grant was made. The certification of the lands did no more than identify them, and was not an act upon which the grant was made to depend. The right and title to the lands passed by the grant; the certification pointed out the subject of the grant. (See Leavenworth, Lawrence & Galveston R. R. Co., vs. The United States, 92 U. S. 733.) Now the lands had been reserved but not granted until the act of July 12th, 1862. They could not have been certified before that act, for they had not been granted. Within a proper time after the grant they were certified. They were excepted from the railroad grant because of their reservation. They were granted and then certified to the State for the

216 improvement of the river. It is very plain that the failure to certify the lands before the grant for the railroads would not defeat the proviso excepting them, and bring them within the provisions of the act.

V. It is next argued that the reservation of the lands upon which def't's title is based was not upon the Des Moines River, but upon a tributary, called in the record the East Branch, and sometimes designated upon the maps as Boone River. This position as to the facts is based upon the certification of about 1,100 acres upon the East Branch in 1853, and the want of knowledge exhibited in many instances by executive officers of the Government that would enable them to determine which stream was the main river. The grant is of lands upon the river, not upon the branch.

The lands in question are upon the main river. The reservations were made upon the grant, and they must have extend' to the lands on the

river, including the lands in controversy. The certification of lands
217 upon the East Branch was an error, and was afterwards corrected. If def't or the State gained anything by the mistake, it is not a ground upon which pl't'ff can defeat def't's title. Surely it cannot be maintained that the grant of lands upon the river is affected by a mistaken selection upon the East Branch, even should such selection operate to the prejudice of pl't'ffs. The grant cannot be defeated in that way. The def't holds under the grant, and mistakes of the officers of the Government cannot change the subject of the grant.

VI. It is insisted that the lands in question were until 1853 Indian lands, having been before that date reserved by treaty for the use and occupation of the Sioux tribe of Indians, and therefore could not be reserved or granted to the State.

We will not enter upon a discussion of the testimony before us in order to determine the facts upon which the position of counsel is based. For the purpose of this case we may admit the facts to be as claimed
218 by him, and that it was not competent for the Government to grant or reserve the lands before the Indian title was extinguished.

But the Indian title was extinguished in 1853. After that date the lands in question were reserved under competent authority for the State. Such reservation, in fact, existed May 15th, 1856, when the railroad grant was made; the United States Supreme Court has so decided in the cases above cited. It matters not if, at the date of the reservation, it was illegal because the Indian title was not extinguished. If the reservation was continued and recognized after the extinguishment of that title, it was just as valid as though it had been good from the beginning. The reservation may be regarded as dating from the time the Indian title was extinguished, if at and subsequent to that time it did, in fact, exist, though before it had been unauthorized. As we have seen, it was competent for the executive department to reserve the lands; the U. S. Supreme Court so holds in the cases above cited, and further holds that when the lands was
219 granted for railroad purposes May 15th, 1856, there was an actual reservation for the purpose of the improvement of the Des Moines River.

In this view of the case it becomes unimportant to determine whether the Indian title was extinguished to the Territory in which the lands in question are situated, prior to 1853, which is denied by pl't'ff's counsel. The existence of such a title as claimed by him is certainly immaterial, and cannot control the determination of the case.

VII. After the decision was announced in the court below, the def't made a motion for a new trial, based upon the ground of newly-discovered evidence and surprise at the trial by the introduction of evidence by pl't'ffs. The evidence referred to in this motion, both newly discovered and offered at the trial, related to the point made by pl't'fs to the effect that the Territory in which the lands are situated was a part of an Indian reservation, or the Indian title thereto had not been extinguished. Counsel for def't claim that the maps and other documents bearing upon
220 this point which were introduced by pl't'ffs wrought the surprise of which they complain, and that the newly-discovered evidence which in part consists of the official survey of the boundary of the Indian lands as fixed by treaty, and a map exhibiting the actual protraction of the field notes of that survey.

This evidence counsel insist shows that the lands in controversy were not, in 1846, when the original grant for the improvement of the navigation of the Des Moines River was made, nor at any time thereafter, within territory reserved for the use and occupancy of the Indians.

We find it unnecessary to consider the questions raised by def't's counsel assailing the decision of the court below in overruling this motion. It will be readily understood that this conclusion is based upon the view that if it be true the Indian title was not extinguished until 1853 the lands were afterwards reserved by competent authority for the purpose of improving the navigation of the Des Moines River. If the evidence
221 before the court below established the existence of the Indian title until 1853, the decision and the decree are not supported by the testimony before us, and are therefore erroneous. We are therefore relieved of the duty of inquiring into the correctness of the ruling of the district court in overruling the motion for a new trial. We have not noticed all the arguments made by counsel nor discussed all the evidence in the case. The testimony is voluminous, and the arguments on both sides elaborate and able and quite extensive. We reach a very satisfactory conclusion upon the course of reasoning presented above and under the authorities we have cited. It is impossible, in an opinion of reasonable length, to notice all the facts and arguments which support our conclusions, or to reply to all arguments urged against them. The facts and reasons upon which our decision is based we have stated fully, and we hope with reasonable clearness. The decree of the district court is reversed, and a decree will be entered in this court dismissing plaintiff's petition.

Reversed.

222 I, E. J. Holmes, clerk of the supreme court of Iowa, hereby certify the foregoing to be a true, full, and complete copy of the record and of all proceedings in the above-entitled suit, wherein the Dubuque & Sioux City R. R. Co. and the Iowa Homestead Co. were plaintiffs and appellees, and the Des Moines Valley R. R. Co. was defendant and appellant, together with copy of opinion by said court in said suit, and the appeal bond, citation, and original writ of error in said suit as true, full, and complete as the same appears of file and record in my office.

Witness E. J. Holmes, clerk of the supreme court of Iowa, with the seal of said court hereto attached, at my office at Des Moines this 13th day of September, 1880.

[SEAL.]

E. J. HOLMES,
Clerk Supreme Court of Iowa.

(Indorsement on cover:) No. 71. The Dubuque & Sioux City Railroad Company and The Iowa Homestead Company, plaintiffs in error, vs. The Des Moines Valley Railroad Company. Iowa sup. court. Filed 8th October, 1880.

09-329

OFFICE SUPREME COURT U. S.
FILED
OCT 23 1883
JAMES H. McKENNEY, Clerk

Supreme Court of the United States.

OCTOBER TERM, 1883.

THE DUBUQUE & SIOUX CITY R. R. CO. *et al., Plaintiffs in Error.*

vs.

THE DES MOINES VALLEY R. R. CO., *Defendant in Error.*

NO. 71. CHANCERY.

In Error to the Supreme Court of Iowa.

ARGUMENT FOR PLAINTIFFS IN ERROR.

BY CHARLES A. CLARK.

CEDAR RAPIDS, IOWA:
DAWLEY & METCALF, PRINTERS.
1883.

This evidence counsel insist shows that the lands in controversy were not, in 1846, when the original grant for the improvement of the navigation of the Des Moines River was made, nor at any time thereafter, within territory reserved for the use and occupancy of the Indians.

We find it unnecessary to consider the questions raised by def't's counsel assailing the decision of the court below in overruling this motion. It will be readily understood that this conclusion is based upon the view that if it be true the Indian title was not extinguished until 1853 the lands were afterwards reserved by competent authority for the purpose of improving the navigation of the Des Moines River. If the evidence
221 before the court below established the existence of the Indian title until 1853, the decision and the decree are not supported by the testimony before us, and are therefore erroneous. We are therefore relieved of the duty of inquiring into the correctness of the ruling of the district court in overruling the motion for a new trial. We have not noticed all the arguments made by counsel nor discussed all the evidence in the case. The testimony is voluminous, and the arguments on both sides elaborate and able and quite extensive. We reach a very satisfactory conclusion upon the course of reasoning presented above and under the authorities we have cited. It is impossible, in an opinion of reasonable length, to notice all the facts and arguments which support our conclusions, or to reply to all arguments urged against them. The facts and reasons upon which our decision is based we have stated fully, and we hope with reasonable clearness. The decree of the district court is reversed, and a decree will be entered in this court dismissing plaintiff's petition.

Reversed.

222 I, E. J. Holmes, clerk of the supreme court of Iowa, hereby certify the foregoing to be a true, full, and complete copy of the record and of all proceedings in the above-entitled suit, wherein the Dubuque & Sioux City R. R. Co. and the Iowa Homestead Co. were plaintiffs and appellees, and the Des Moines Valley R. R. Co. was defendant and appellant, together with copy of opinion by said court in said suit, and the appeal bond, citation, and original writ of error in said suit as true, full, and complete as the same appears of file and record in my office.

Witness E. J. Holmes, clerk of the supreme court of Iowa, with the seal of said court hereto attached, at my office at Des Moines this 13th day of September, 1880.

[SEAL.]

E. J. HOLMES,
Clerk Supreme Court of Iowa.

(Indorsement on cover:) No. 71. The Dubuque & Sioux City Railroad Company and The Iowa Homestead Company, plaintiffs in error, vs. The Des Moines Valley Railroad Company. Iowa sup. court. Filed 8th October, 1880.

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Supreme Court of the United States.

OCTOBER TERM, 1883.

THE DUBUQUE & SIOUX CITY R. R. CO. *et al., Plaintiffs in Error.*

vs.

THE DES MOINES VALLEY R. R. CO., *Defendant in Error.*

NO. 71. CHANCERY.

In Error to the Supreme Court of Iowa.

ARGUMENT FOR PLAINTIFFS IN ERROR.

BY CHARLES A. CLARK.

CEDAR RAPIDS, IOWA:
DAWLEY & METCALF, PRINTERS.
1883.

—IN THE—

Supreme Court of the United States.

OCTOBER TERM, 1883.

THE DUBUQUE & SIOUX CITY R. R. CO. et al., Plaintiffs in Error vs. THE DES MOINES VALLEY R. R. CO., Defendant in Error.	No. 71. Chancery.

In error to the Supreme Court of Iowa.

Argument for Plaintiffs in Error by Charles A. Clark.

STATEMENT.

This suit involves ten thousand acres of land situated in Pocahontas and Humboldt counties, Iowa.

The plaintiffs in error claim the land under an act of Congress of May 15, 1856, granting lands to the State of Iowa to aid in building a railroad from Dubuque to Sioux City. (Record, pp. 9 and 10.)

The State of Iowa, by act of its Legislature approved July 14, 1856, accepted this grant, and made an absolute grant of all the lands embraced therein to the Dubuque & Pacific Railroad Company. (Record, 11–13.)

By legislative act approved January 28, 1857, the State authorized the mortgaging of these lands by the Dubuque & Pacific Railroad Company to raise money to build the road. (Record, 14.) The Dubuque & Pacific Railroad Company did mortgage the lands accordingly, and by foreclosure proceedings under such mortgage all the lands, franchises and rights of that company passed to and were acquired by the Dubuque & Sioux City Railroad Company, one of the plaintiffs in error herein, in the month of August, 1860. (Record, 19–22.)

This change in the beneficiary of the grant was recognized by act of Congress of June 2, 1864 (Record, 18), and by the Legislature of Iowa, April 7, 1862. (Record, 16.)

The lands in controversy were certified by the Secretary of the Interior under the act of Congress above referred to on the 27th of December, 1858. (Record, 22–23.)

If within said grant of May 15, 1856, they were earned by the Dubuque & Sioux City Railroad Company by building a portion of the road contemplated by said grant as early as July 29, 1865. (Record, pp. 76 and 156.)

The lands are within the limits of the grant under which the plaintiffs in error claim, and subject thereto, unless excluded therefrom by the following proviso to the act making the grant:

"That any and all lands heretofore reserved to the United States by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose what ever, be, and the same are hereby, reserved from the operation of this act." (Record, p. 10, top.)

The defendant in error claims that these lands are excluded from the grant by the terms of this proviso, and that it is entitled to the lands under the following facts:

By act of August 8, 1846, Congress granted to the then Territory of Iowa, lands to aid in the improvement of the navigation of the Des Moines river, as follows:

"From its mouth to the Raccoon fork, so called, in said Territory, one equal moiety in alternate sections of the public lands (remaining unsold, and not otherwise disposed of, encumbered or appropriated), in a strip five miles in width on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the Governor thereof, subject to the approval of the Secretary of the Treasury of the United States." (Record, 86, bottom, and 87, top.)

This grant was accepted by Iowa after being admitted as a State, in August, 1847, and the odd numbered sections along the Des Moines river, within the limits of the grant, were selected by its agents as its moiety of such lands.

At its December term, 1859, this court decided that said grant of lands for the improvement of the Des Moines river did not extend above the Raccoon fork, being the point on said river where the city of Des Moines, the capital of the State, is situated.

Dubuque & Sioux City R. R. Co. vs. Litchfield, 23 How., 96.

The lands in controversy are north of Ft. Dodge, on the Des Moines river, and far north of the Raccoon fork. They did not, therefore, pass to the defendant in error under the original "River Grant," so called.

By act of Congress, 12th July, 1862, the "River Grant" was extended to the north line of the State of Iowa. This act is six years later than the grant under which plaintiffs in error claim. In order to take the lands out of such prior grant, the defendants in error claim that they are included in the proviso of that grant above quoted, by having been "reserved by competent authority for the purpose of aiding in an object of internal improvement," viz.: The Des Moines river, under the act of 1846.

If they were so reserved in fact under the River Grant of 1846, then, although that grant did not extend to these lands, yet they would be thereby excluded from the railroad grant,

and would pass to the defendant in error, under the act of 12th July, 1862, extending the grant of 1846, under the decisions of this court.

Wolcott vs. Des Moines Co., 5 Wall, 601.
Williams vs. Baker, 17 ib., 144.
Homestead Co. vs. D. V. Co., 17 ib., 153.

To show that the lands were reserved under the river grant of 1849, the defendant in error relies upon the following orders and decisions of officers of the U. S. Land Department, reserving lands under said grant.

1. A decision of Richard M. Young, Commissioner of the General Land Office, dated Feb. 23, 1848. (Rec. 90.)

2. A decision of R. J. Walker, Secretary of the Treasury dated March 2, 1849. (Rec. 94.)

3. An order of Richard M. Young, commissioner of the General Land Office, dated June 1st, 1849, addressed to the Register and Receiver of the U. S. Land Office at Iowa City, Iowa. (Rec. 94-5.)

4. A decision of Hon. T. Ewing, Secretary of the Interior, dated April 6, 1850. (Rec. 97.)

5. A decision of Hon. A. H. H. Stuart, Secretary of the Interior, dated July 26, 1851. (Record, 101.)

The record shows no other order or decision prior to the passage of the railroad grant of 1856, which in any manner operates as a reservation of lands for the river grant.

Under these orders and decisions the Land Department refused to certify any lands to the railroad grant which had been reserved under the river grant until May, 1863. (Record, 119–121; 81, bottom; 82, top; 38–42.)

The lands in suit, however, were certified to the railroad grant in 1858, as already stated.

And these lands were never certified under the river grant until January 29, 1874. (Record, 130, 131 and 135.)

If, however, these lands were *in fact* reserved for the river grant under the above orders and decisions, plaintiffs in error acquired no title under their grant.

But plaintiffs in error insist that those lands were not reserved for the river grant for two reasons.

1. Because, at the times of these various orders and decisions, relied upon by the defendant in error, the Indian title to the lands in suit had not been extinguished, but had been guaranteed to the Indians by solemn treaty stipulations; that such Indian title was not extinguished until 1853, or two years after the last order relied upon to show a reservation under the river grant.

2. Because the reservation for the river grant was up the east branch of the Des Moines river, and these lands are on the west branch of that river, outside of the limits of that reservation.

As to the Indian title, the facts are: Originally the territory now erected into the State of Iowa, as will be gathered from the Indian treaties hereinafter referred to, was occupied as follows: The northern part of the State by various tribes of the Sioux; South of the Sioux and extending to the north boundary of Missouri were the Sacs and Foxes, who extended westward somewhat beyond the boundary made by the Des Moines; west of the Des Moines to the Missouri were the several bands of Sioux, the Ottoes, Omahas, Iowas, Missourias and the Pottawattamies.

The first treaty with the savages in the territory now composing the State of Iowa was negotiated in August, 1825, by Lewis Cass and William Clark, with the Sacs and Foxes and the Sioux. The object of this treaty was not to acquire lands for settlement, but, as declared by the preamble, in "order to promote peace among these tribes, and establish boundaries among them, and remove all causes for any further difficulty."

By this treaty, a boundary line was established between

the Sioux on the north and the Sacs and Foxes on the south, from a point where the upper Iowa river empties into the Mississippi, thence southwest to the upper fork of the Des Moines river. (7 Stat. at Large, 272.)

In 1830, while the entire State of Iowa was still Indian country and wholly occupied by the savages, a further treaty was negotiated with various bands of Indians at Prairie du Chien by William Clark and Colonel Morgan, of the United States army. This treaty was signed on the 15th of July, 1830, and ratified February 24, 1831.

By the first article the Sacs and Foxes, Medawah-Kanton, Wapa-Cootah, Wahpeton and Sisseton bands of Sioux, the Omahas and Iowas, Ottoes and Missourias, ceded to the United States, for *Indian purposes*, the lands lying within the following boundaries:

"Beginning at the upper fork of the Des Moines river, passing the sources of the Little Sioux and Floyd rivers, to the fork of the first creek which falls into the Big Sioux or Calumet river on the east side; thence down said creek and Calumet river to the Missouri river; thence down the Missouri river to the Missouri State line above the Kansas; thence along said State line to the northwest corner of the State of Missouri; thence to the high lands between the waters falling into the Missouri and Des Moines, passing on said high lands along the dividing ridge between the forks of the Grand river; thence along said high lands or ridge separating the waters of the Missouri from the Des Moines, to a point opposite the source of the Boyer river; and thence on a direct line to the upper fork of the Des Moines, the place of beginning. But it is understood that the lands ceded and relinquished by this treaty are to be assigned and allotted, under the direction of the President of the United States, to the tribes living thereon."—(the bands of Indians named) "or such other tribes as the President may locate thereon for hunting purposes."

By the twelfth article of this treaty it was provided "that nothing contained in the foregoing articles shall be so construed as to affect any claim or right in common, which has heretofore been held by any tribes parties to this treaty, to any lands not embraced in the cession herein named; but the same shall be occupied and held by them as heretofore."

By the second article of this treaty the Sacs and Foxes ceded to the United States a tract of country twenty miles in width immediately south of the line between them and the Sioux, established by the treaty of August 19, 1825, above set out.

By the third article the Sioux Indians ceded a like tract twenty miles in width north of said boundary line. (7 Stat. at Large, 328.)

This strip, forty miles in width, extending from the northeast corner of Iowa to the Des Moines river, was known for many years as the "Neutral Ground." (See map No. 5.)

During the years 1832 and 1833 the United States by treaties located upon this neutral ground the Winnebago Indians. (7 Stats. at Large, 371. Ib., 544.)

And in 1833 the Government in like manner by treaty located the Ottawa and Pottawattamie Indians in Iowa, west of the Des Moines, upon the land ceded for Indian purposes by the Sioux and other bands, by the treaty of 1830 above mentioned. (7 Stats. at Large, 431.)

The first extinguishment of the Indian title in the State of Iowa for the purpose of settlement was made by treaty with the Sacs and Foxes September 21, 1882. To punish those Indians for their participation in the Blackhawk war of that year, Gen. Scott compelled them to cede a tract extending from the south boundary of the neutral ground to the north boundary line of Missouri, and practically fifty miles in width, immediately west of the Mississippi. (7 Stats. at Large, 374.)

This paved the way for the first foothold of the white man

in what is now the State of Iowa. On the 21st of October of that year the Sacs and Foxes made a further cession of a million and a quarter of acres lying immediately west of the tract first ceded. (7 Stats. at Large, 540.)

Matters remained thus until the Government desired to extend Northwestern Missouri to the Missouri river. To accomplish this end various bands of Indians were induced to cede their right in that small corner of the territory set apart by Article 1, Treaty of 1830, for Indian purposes, by treaties as follows:

The Iowas, Sacs and Foxes of Missouri, September 13, 1836. (7 Stats. at Large, 511.)

The Sioux of Wa-ha-shaw's tribe, September 10, 1836. (7 Stats. at Large, 510.)

The Ottoes, Missourias, Omahas, Yankton and Santee bands of Sioux, October 15, 1836. (7 Stats. at Large, 524.)

The Wahpaakootah, Susseton and Upper Medawakanton tribes of Sioux, November 30, 1836. (7 Stats. at Large, 527.)

The Sacs and Foxes of Iowa, September 27, 1836. (7 Stats. at Large, 516.)

All of these treaties recited the right of the Indians in the land ceded by the first article of the treaty of July 15, 1830, and and all declared anew that these rights would be strictly observed until relinquished by the Indians.

Later still, some of these tribes, other than the Sioux, ceded their rights in this reservation.

The Sacs and Foxes, October 21, 1837. (7 Stats. at Large, 540.)

The Iowas, October 19, 1838. (7 Stats. at Large, 568.)

The Sacs and Foxes of Missouri, October 21, 1837. (7 Stats. at Large, 543.)

In 1842 the Sacs and Foxes ceded all their lands in Iowa to

the United States, reserving, however, the right to occupy the greater portion of such cession until 1845. (7 Stats. at Large, 596.)

And the Sacs and Foxes, in accordance with this treaty, vacated the southern part of Iowa in 1845.

In June, 1846, the Ottawas, Chippewas and Pottawattamies ceded all their lands in Iowa west of the Sacs and Foxes, and agreed to remove therefrom to a reservation west of the Missouri river within two years from that date. (7 Stats. at Large, 853.)

In October of the same year the Winnebagoes ceded the neutral ground and agreed to remove within one year from the date of the treaty. (7 Stats at Large.)

Other Indian titles in Iowa were extinguished as follows:

The Ottoes and Missourias, March 15, 1854. (10 Stats. at Large, 1038.)

The Omahas, March 16, 1854. (10 Stats. at Large, 1043.)

Thus we have all the Indian titles in Iowa extinguished except as to the Sioux. They retained all their rights in the tract ceded for Indian purposes by Article 1, Treaty of 1830, and their possessory title in lands north of that tract, until treaties with them were finally concluded in September, 1852, and proclaimed by the President February 24, 1853. (10 Stats. at Large, 949 and 954.)

That the lands in suit were within the Sioux Indian country not ceded for Indian purposes by treaty of 1830, and never ceded for any purpose until these treaties of 1853, is clearly shown by the maps of the Land Department for 1846-49-50-51 and 53, giving the south boundary line of Sioux Indian territory or country. (See maps numbered 3, 5, 7, 8 and 9 in Record.)

Even if the lands in suit were within the boundaries of the tract set apart for Indian purposes by Article 1, Treaty of 1830,

and hence a portion of an Indian reservation, they were rightfully occupied by the Sioux, and not subject to reservation for the Indian grant at the time of any of the orders or decisions under which defendant in error claims. For it will be remembered that the Sioux never relinquished their right to the reservation created by this treaty of 1830, until the treaties of 1853, above referred to, and the maps show the Sioux rightfully in possession of territory south of these lands in suit until these treaties were concluded.

That the Indians were actually in possession and the Government desired to extinguish their title, see Report of Surveyor General of Iowa for 1849. (Rec. 60 bottom, 61 top, 61 middle.)

Letter of Surveyor General of Iowa to Commissioner of Land Office, dated August 15, 1849. (Rec. 62.)

Report of Surveyor General of Iowa for 1850 (Rec. 63), reporting one-eighth of the whole area of Iowa still possessed and occupied by the Sioux tribe.

Report of the Commissioner of the General Land Office for 1851. (Rec. 65.)

Report of the Surveyor General of Iowa for 1851. (Rec. 66.)

Report of the Commissioner of Indian Affairs for 1851. (Rec. 66.)

Report of Commissioners Lee and Ramsey, who negotiated the Sioux Indian treaties of 1853. (Rec. 67 and 70.)

Such are the facts in regard to the unextinguished Indian title to these lands at the time it is claimed the officers of the Land Department were reserving them from market under the river grant of 1846.

Now turn to the other branch of the case, and it will be seen that such reservation as was made under the river grant was up the east branch of the Des Moines river. The lands in suit being on the west branch and more than five miles from

the west side of the east branch, were outside of any reservation attempted or made under the act of 1846.

That the reservation was up the east branch appears from the following facts:

By map No. 5, being that of 1846, the east branch is laid down by the Land Department as the Des Moines river proper. This was continued as late as 1849, and on all the maps from 1850 to 1853 the east branch is laid down as the Des Moines river to a point far north of the lands in controversy. Of course, in reserving lands in 1853, the Land Department reserved them along what was then supposed to be the main trunk of the Des Moines river; and as we have seen, there was no order of reservation after 1853, and prior to the railroad grant of 1856.

On the 13th of June, 1850, the Commissioner of the General Land Office addressed to the Secretary of the Interior a communication relative to the Des Moines river grant. With this letter he enclosed a diagram of the State of Iowa, on which the boundaries of the river grant above the then surveyed lands were delineated by blue lines. (Rec. 161.)

This diagram has disappeared from the General Land Office, and no copy of it is in evidence, but we have the Department maps of that date, and, as already pointed out, on all of these maps the east branch is laid down as the Des Moines river proper. This being so, it follows that the supposed boundaries of the grant above the surveys were marked out along the east branch. That was the only Des Moines river then known to the Department.

In 1853 lands were certified to the river grant in large quantities above the Raccoon forks. This certification extended above the confluence of the east and west branches and included 11,661 80-100 acres on the east side of the east branch, and which were more than five miles from the west branch. Had the res-

ervation been up the west branch these lands could not have been certified, being too remote from that stream. No lands were certified to the river grant on the west branch until after the act of July 12, 1862, extending the river grant.

That the lands above mentioned were certified along the east branch and were more than five miles from the west branch, see certified list. (Rec. 24-5.)

Letter of Secretary Asher. (Rec. 44-5.)

Harvey settlement. (Rec. 46-9.)

By the joint resolution of Congress of March 3, 1861, the title to this 11,661 80-100 acres was confirmed under the river grant in the State of Iowa, and its grantee the defendant in error.

There was no change in the reservation for the river grant between the time when these lands were certified on the east branch, in 1853, and the passage of the railroad grant in 1856. On the contrary, on the 7th day of January, 1856, the President of the Des Moines Navigation and Railroad Company, under which corporation the defendant in error claims, on behalf of said company and the State, applied to the Commissioner of the General Land Office, Hon. Thomas Hendricks, for a further reservation of lands for the river grant to the sources of the Des Moines in Minnesota. (See his letter—Record, 76–77.)

This was an application to have lands reserved along the west branch, as the east branch does not extend into Minnesota. It is the first reference to the matter to be found after the action of the department in certifying the lands in 1853 on the east branch.

The Commissioner, on the 21st of March, 1856, replied to this letter, that the river grant did not extend above the Raccoon fork, and declining to make any reservation for that grant. (Record, 77.)

Here, then, was a refusal to reserve land on the west branch

for the river grant just prior to the passage of the railroad grant, which, as stated, took place May 15, 1856, not quite two months later.

On the 21st of March, 1856, the president of the Des Moines Navigation and Railroad Company addressed a communication to the Secretary of the Interior, in effect appealing from the decision of the Commissioner of the Land Office. This appeal was referred to the Commissioner March 22, 1856, and March 24, 1856, he replied to the Secretary of the Interior, reiterating his former decision. (Record, 77–79.)

Thereupon, on the 7th day of May, 1856, the Commissioner submitted the question involved to Hon. Cushing, Attorney General. On the 29th of May, 1856, Mr. Caleb Cushing addressed his opinion in the premises to the Secretary of the Interior. (Record, 25–36.)

In this opinion Mr. Cushing holds that the former action of the department in recognizing the river grant above the Raccoon forks had reference to the east branch alone. He says (Record, 33.)

"There remains the question on which of the two upper confluents of the Des Moines, the eastern or western, the land is to be taken. I conceive that point to be absolutely determined by the premises of my conclusion."

And after showing that Secretaries Walker and Stuart, while holding that the grant extended to the source of the Des Moines, still limited it to the north boundary of the State, he adds (Record, 34):

"They unquestionably had before them the maps of the State on which the eastern branch of the Des Moines was alone depicted, taking its rise in a lake on the boundary line of Minnesota. If they had knowledge of any western branch of greater or less length, they treated the eastern branch as the true Des Moines."

And in conclusion he advises the Secretary to certify lands

along the east branch to the north boundary of the State, if the State and its assigns would accept this in full settlement of the grant. If this was refused, the Secretary was advised to "absolutely refuse to approve any more selections above the Raccoon fork."

The Secretary of the Interior decided to be guided by this opinion of the Attorney General, and so advised the Commissioner by letter, dated June 9, 1856. (Record, 36.)

Thereupon the Commissioner, July 14, 1856, addressed a letter to the Secretary, referring to this decision of his superior, saying "That opinion"—of the Attorney General—"sanctioned by you, allows the claim of this State for lands above the Raccoon fork and up to the north line of the State, along the east fork, a branch of the Des Moines river, on condition that the State will agree to the decision of Secretary Stuart as final, and relinquish all claims to land in Minnesota Territory. The question now submitted is whether the department will act on Mr. Johnson's application before the formal assent of the State is given under the Attorney General's opinion." (Record, 37.)

The Secretary promptly replied, two days later, that action should be suspended until the assent of the proper authorities was obtained to the conditions named. (Record, 37, bottom; 38, top.)

The State did not assent to the conditions, and the matter stood without further action of any kind until May, 1858, when the State refused to accept, and negotiations were broken off. (Record, 115–6.)

Following these decisions in 1856, that the department had recognized and would recognize the grant on the east branch only, are certain acts of the Land Department, showing that the reservation for the river grant still continued on the east branch.

On January 28, 1858, the Commissioner transmitted to the Register and Receiver of the United States Land Office at Fort

Dodge a map showing the limits of the railroad and river grants in their districts for their guidance in disposing of the public lands. This is map No. 4, in original book of maps on file.

And this map confined the limits of the reservation for the river grant to the east branch of the Des Moines. (For above letter of Commissioner, see Record, 59.)

Again, March 18, 1862, the Commissioner transmitted to the Secretary a map laying down the limits of the conflicting railroad and river grants, of which map the Commissioner says: "The enclosed map indicates by letters C, D, E the routes of the said roads east and west, and by F G in connection therew ith, the location of the Des Moines river route traversing the roads north to south."

This map, like the other, locates the "river route" on the east branch of the Des Moines. (Record, 38–9.)

Original map No. 1, Book of Maps on file. (Record, 42.)

On the 17th day of August, 1860, the Commissioner submitted to the Secretary two proclamations of public lands in Iowa, the first of which embraced "lands above the Raccoon fork, which had been claimed under the Des Moines river grant before the recent decision of the Supreme Court," but did not include any of the lands above the Raccoon forks, which had been improperly certified before their decision.

The second proclamation excluded the lands claimed for the Des Moines river grant, in case it should be decided to await action by congress over the whole claim and extent of that grant,

The Secretary submitted these proclamations to the President, recommending that the lands be proclaimed for sale according to the first form of proclamation, including all lands claimed for the River Grant above the Raccoon fork, so far as the same had not been certified.

Accordingly, on the very day the Secretary made this rec-

ommendation, August 14, 1860, the President signed and issued this proclamation, No. 1. (Record, 56–58.) The lands in suit are not included in this proclamation, showing that they had not been claimed or reserved for the River Grant up to that time.

One other view of the facts in the case demands attention. After the decision of the Wolcott case, in 1859, the lands along the Des Moines river within the limits of the railroad grant were treated by the Land Department as belonging to the railroad company, and passing to it under its grant. They were accordingly certified to the State of Iowa under the railroad grant in April, 1863. (Record, 40–42.)

Indemnity was allowed the River Grant for them by decisions of November 3, 1862, and April 7, 1863. (Record, 44.)

And a special certificate was issued for such indemnity to the amount of 300,000 acres. (Record, 45–82.)

Under this certificate the State selected as indemnity for lands certified to by the railway companies 297,603.74 acres. (Record, 48.)

Matters standing thus, and the river grant remaining unadjusted, the Legislature of Iowa passed an act, approved March 30, 1866, the parts of which material to this suit were as follows:

"An act providing for the adjustment of certain land claims with the General Government.

WHEREAS, The excess of land certified to the State over and above the amount it was entitled to receive under the act of Congress of September 4, 1841, known as the 500,000 acre grant, has not been re-conveyed, nor satisfaction therefor rendered to the General Government; and

WHEREAS, The lands falling to the State under the joint resolutions of Congress of March 3, 1861, entitled "Joint resolutions to quiet titles in the State of Iowa," and under the act of Congress entitled "An act confirming a land claim in the

State of Iowa and for other purposes," approved July 12, 1862, have not yet been certified or approved to the State; and

WHEREAS, The claims of the State against the United States, arising under the Swamp Land Grant, remain to a very great extent in an unsettled and unsatisfactory condition; and

WHEREAS, The interests of the State and her grantees demand a speedy settlement of all said matters; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That Josiah A. Harvey, Register of the State Land Office, be, and he is hereby, appointed a Commissioner on behalf of the State of Iowa to adjust with the General Government all the matters and claims aforesaid.

SEC. 2. Said Commissioner shall proceed to Washington City, and present said claims to the Department of the Interior, and urge the same to settlement as early and as speedily as may be consistent with the interests of the State, and he is hereby authorized to adjust the excess of 500,000 acre grant, by permiting the United States to retain out of the indemnity land falling to the State under said act of Congress of July 12, 1862, an amount equivalent of such excess. *Provided*, that nothing herein contained shall be construed to be a relinquishment of the claim of the State under the said 500,000 acre grant to the 12,813 51-100 acres selected as a part of such grant, and subsequently rejected from a supposed conflict with the act or Congress approved August 8, 1846, known as the Des Moines river grant, and the said Commissioner is hereby instructed to secure a restoration of said selections as a part of the 500,000 acre grant and a confirmation of the title of the State thereto, as a part of such grant.

SEC. 3. As soon as the claim or claims, or matters of difference under any one of said acts, shall be adjusted, said Commissioner shall report the same to the Census Board, setting forth the terms and mode of adjustment, and said Board shall examine and pass upon said adjustment, so presented, and the

approval of a majority of said Board shall make the settlement of said matters or claims final and binding upon the State of Iowa. Such approval shall be in writing, signed by the members of said Board, agreeing thereto, and attested by the great seal of the State of Iowa.

* * * * * * * * * *

Approved March 30, 1866.

Armed with this authority, Commissioner Harvey went to Washington, and on the 22d of May, 1866, effected a settlement with the General Government as to the amount of lands due the State under the river grant. This settlement treated the lands within the geographical limits of the railroad grant as belonging to it, and accepted in lieu thereof indemnity lands already secured as above pointed out. This settlement was approved by the Census Board of Iowa June 20, 1866. (Record 46-50.)

This settlement was assented to by the agent of the Des Moines Valley Railroad Co. (Record 50-1), and thereupon, under the terms of the statute above set out, it became final and binding upon the State of Iowa, and upon the Des Moines Valley Railroad Co., its grantee.

It will be observed that provision was made for this indemnity by the act of Congress of July 12, 1862, extending the river grant, by the following provision :

"And if any of said lands shall have been sold or otherwise disposed of by the United States before the passage of this act, excepting those released by the United States to the grantees of the State of Iowa under the joint resolution of March 2, 1861, the Secretary of the Interior is hereby directed to set apart an equal amount of lands within said State to be certified in lieu thereof." Treating the land within the railroad grant as "otherwise disposed of," the Land Department issued this certificate, and thus secured the to river grant indemnity for the very lands now in controversy.

After this settlement was thus made and assented to by all the parties in interest, the Legislature passed an act, approved March 31, 1868, the parts of which material to this suit were as follows :

* * * * * * * * *

WHEREAS, Said Keokuk, Fort Des Moines & Minnesota Railroad Co. is now known as and called the Des Moines Valley Railroad Co.; and,

WHEREAS, Said Railroad Co. is in default in respect to the time of construction of said road, and in the performance of other conditions of said grant, whereby the State has the right to resume the whole or a part of said lands ; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That the reserved rights and interests of the State in respect to the resumption and disposal of said lands are hereby relinquished to and conferred upon the said Des Moines Valley Railroad Co., in manner and upon performance of the conditions precedent by said Company, as hereinafter set forth, and not otherwise, viz.:

* * * * * * * * * *

Fifth, * * * * * and the settlement made and approved June 20, 1866, by the Census Board of the State of Iowa, with the Des Moines Valley Railroad Co., and the settlement with the United States therein referred to, are hereby ratified and confirmed.

SEC. 2. In case of non-compliance by said Railroad Co. with the foregoing conditions by it to be performed, then without further legislation, this act shall have the force and effect of an act of resumption, and all rights of said Company in and to said lands or any part thereof, heretofore, or hereby granted to said Company, and not at the time of such failure actually conveyed by the State to said Company, shall be forfeited to and revested in the State of Iowa as fully as if the grant thereof had never been made by the State.

SEC. 3. This act shall be accepted by the said Railroad Co. and evidenced by the signatures of the President and Secretary of said Company with the corporate seal thereof within thirty days from the approval of this act; but the non-acceptance by said Des Moines Valley Railroad Co., of this act shall not prevent all the foregoing provisions thereof from having the same operation and effect as if the same had been accepted by said Company. * * * * * *

Approved March 31, 1868.

The settlement of June 20, 1866, referred to in the foregoing act, is the Harvey settlement, by which the river grant secured indemnity for the lands within the railroad grant, including the lands in suit. The defendant in error claims under this last act of the Legislature, and its rights and claims are limited by that act.

That nothing might be wanting to complete the title of the defendant in error to the indemnity lands received under the Harvey settlement, Congress, by act of March 3, 1871, (16 Stats. at Large, 582), confirmed the title of these indemnity lands to the State and its grantee, the said defendant in error.

In the cases heretofore decided by this court touching lands under the River Grant, and cited supra, the lands then in litigation had all been certified to the State for the River Grant prior to the joint resolution of March 3, 1861, and the title to such lands formerly in litigation was confirmed to the State by that resolution, which provided

"That all the title which the United States still retains in the tracts of land along the Des Moines river, and above the mouth of the Raccoon fork thereof, in the State of Iowa, which have been certified to the State improperly by the Department of the Interior as a part of the grant by act of Congress approved August 8, 1846, which is now held by bona fide purchasers under the State of Iowa be, and the same is hereby, relinquished to the State of Iowa."

But in this case we have lands not certified to the State under the River Grant until the year 1874. They were not surveyed nor the subject of reservation from sale or entry at the time of any of the orders or decisions under which defendant in error claims, and were, moreover, Indian lands, and could not be surveyed or put into market at the time of such orders and decisions.

Prior to the passage of the railroad act, as already pointed out, the Land Commissioner, Hon. Thomas Hendricks, had decided that the River Grant was satisfied, and had refused to certify these lands, or any others, thus nullifying and setting aside the former action of the department reserving or withholding lands for the river grant.

In this condition of things the railroad grant was passed. These lands, as the records show, were shortly after, in 1858, certified to the State as a part of the railroad grant, and were received and held by the State for such grant.

With matters in this condition the act of 1862 extending the River Grant was passed. The State, holding these lands under the railroad grant, made no claim to them as or for a part of the River Grant, but waived that claim and received indemnity therefor in full and final settlement of the River Grant claim. To this settlement the defendant in error assented, and is bound under the acts of the Legislature above cited.

While the State thus held these lands for the railroad grant, the plaintiff in error, by constructing its road, earned the lands, and became entitled to them. Could the State of Iowa, and the defendant in error thereafter, after having made this settlement and receiving this indemnity, turn round and repudiate all they had done, retain the indemnity received, and deprive the plaintiff in error of the lands which it had thus earned?

This question came before this court first in Dumont v. The Des Moines Valley Railroad Company, at the October term, 1878. The decision of the court below in that case was in favor

of the River Grant, and it was affirmed in this court by a divided bench. The same question is presented by the record in this case, and the plaintiffs in error now ask for an authoritative decision of it.

ASSIGNMENT OF ERRORS.

Plaintiffs in error say there is manifest error upon the face of the record herein, in this :

1. The court below erred in finding that the lands in controversy were reserved under the River Grant, because (a) said reservation was up the east branch of the Des Moines river, and excluded said lands. (b) The lands at the time of such reservation were Indian territory, in the rightful possession of the Sioux Indians, and were not the subject of either sale or reservation.

2. Said court erred in holding that the defendant in error was not bound by the action of the State of Iowa, and its own action in receiving indemnity for the lands in suit, and erred in holding that the defendant could recover said lands notwithstanding such indemnity.

3. Said court erred in dismissing plaintiff's bill.

CHARLES A. CLARK,

Attorney for Plaintiff in Error.

ARGUMENT.

I.

It is conclusively shown that the lands in suit were Indian country up to 1853 ; that all orders and decisions under which a reservation is claimed for the River Grant were made prior to the extinguishment of the Indian title ; that there was no order or other affirmative action of the U. S. Land Department after the extinguishment of the Indian title reserving or attempting to reserve these lands for the River Grant.

The lands are all within townships 91 and 92, ranges 29, 30 and 31. The Indian country extended southeast of these lands to township 89, range 29, being a point on the Des Moines river opposite to which the city of Fort Dodge is now situated. The lands in controversy are twenty miles north of that point.

This country was guaranteed to the Indians.

1. If ceded by treaty of 1830, by provisions of Article 1, of that treaty, that lands thereby ceded should be allotted to "tribes living thereon," (the Sioux Indians were among those tribes and hence signed the treaty) "and such other tribes as might be located thereon."

2. If not ceded by that treaty, the possessory title of the Sioux Indians was guaranteed by Article 12 of the treaty of 1830, providing that lands not ceded "shall be occupied and held as heretofore."

The Constitution, Article VI., Section 2, provides that:

"All treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land."

An Indian treaty is as much the law of the land as a treaty with a foreign power.

Turner vs. American Missionary Union, 5 McLean, 344.

By the supreme law of the land, then, there could be no interference with any of these lands while rightfully in possession of the Sioux Indians, and all orders and decisions of the Land Department reserving land for the River Grant before the Indian title was extinguished must be taken as excluding and not including Indian lands.

It is not an open question that all the lands covered by the Indian title which, as we have seen, was not extinguished until 1853, were specifically excluded from the River Grant of 1846; nor is it an open question that it was not competent for the Secretary of the Treasury, or other officer of the Government, by orders made *before* the Indian reservation was extinguished, to reserve these lands for the benefit of that grant.

Leavenworth, etc., R. R. Co. v. U. S., 2 Otto, 735.
Newhall v. Sanger, ib., 761.
Wilcox v. Jackson, 13 Pet., 498.
U. S. v. Cook, 19 Wall, 591.
State v. Delesdenier, 7 Tex., 76.
Spaulding v. Martin, 11 Wis., 274.

In the case of Leavenworth, etc., R. R. Co. v. the United States, first above cited, the question of a grant or reservation of Indian lands is very fully discussed, and it is said by this court, opinion by Mr. Justice Davis:

"As long ago as *The Cherokee Nation v. Georgia*, 5 *Pet.*, 1, this court said that the Indians are acknowledged to have the unquestionable right to *the lands they occupy*, until it shall be extinguished by a voluntary cession to the Government, and recently, in *United States v. Cook*, 19 *Wall*, 551, that right was declared to be as sacred as the title of the United States to the fee. * * * * * * This perpetual right of occupancy, with the correlative obligation of the Government to enforce it, negatives the idea that Congress, *even in the absence of any positive stipulation to protect the Osages*, intended to grant their land to a railroad company, either absolutely or *cum onere*. For all practical purposes they owned it; as the actual right of posses-

sion, the only thing they deemed of value, was secured to them by treaty, until they should elect to surrender it to the United States. In the free exercise of their choice they might hold it forever; and whatever changed their condition or interfered with it, violated the guarantees under which they lived.

2 Otto, 742.

And again, in the same case:

"We are not without authority that the general words of this grant do not include an Indian reservation. In *Wilcox v. Jackson*, 13 *Pet.*, 498, the President, by proclamation, had ordered the sale of certain lands, without exempting therefrom a military reservation included within their boundaries. The proclamation was based on an act of Congress supposed to authorize it; but this court held that the act did not apply, and then added: 'We go further, and say that whenever a tract of land shall have been once legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands; and that no subsequent law, proclamation or sale would be construed to embrace or operate upon it, although no reservation were made of it.' It may be urged that it was not necessary in deciding that case to pass upon the question; but however this may be, the principle asserted is sound and reasonable, and we accept it as a rule of construction. The Supreme Courts of Wisconsin and Texas have adopted it in cases where the point was necessarily involved. (State vs. Delesdenier, 7 Tex., 75; Spaulding vs. Martin, 11 Wis., 274.) It applies with more force to Indian than to military reservations. The latter are the absolute property of the Government; in the former other rights are vested. Congress cannot be supposed to grant them by a subsequent law, general in its terms. *Specific language, leaving no room for doubt as to the legislative will, is required for such a purpose.*"

Ib., 745.

In the same case it is held to be immaterial that the lands

claimed by the railroad became public lands subsequent to the grant.

In *Newhall v. Sanger*, *supra*, this court held that a grant of "public lands" would not include lands within a spurious Mexican grant, *sub judice* at the time the grant by act of Congress was made; and it also held that the subsequent cancellation of of this Mexican claim did not subject the land to the operation of the railroad grant. In this case it was said, opinion by Mr. Justice Davis:

"The subject of grants of land to aid in constructing works of internal improvement was fully considered at the present term in *Leavenworth, Lawrence & Galveston Railroad Company v. United States*. We held that they did not embrace tracts reserved by competent authority for any purpose, or in any manner, although no exception of them was made in the grants themselves: and we confined a grant of every alternate section of 'land' to such whereto the complete title was vested absolutely in the United States. The acts which govern this case are more absolute, and leave less room for construction. The words 'public lands' are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws. That they were so employed is this instance is evident from the fact that *to them alone could the order withdrawing lands from pre-emption, private entry and sale apply.*"

Under these authorities, how is it possible to say that the Secretary of the Treasury, or any other officer of the Government had the power to reserve lands within the Sioux Indian country for the benefit of the grant of 1846, which was of "public, unincumbered and unappropriated lands" only?

Or, if the power existed in such officer, must not his language by which he attempted such reservation and appropriation of Indian lands be "*specific, leaving no room for doubt*," as is required in the case of an act of Congress affecting such lands?

Tested by the rule laid down by these authorities, it does not appear that any officer of the Government, at any time, attempted to reserve lands within the Indian country for the benefit of the Des Moines River Grant. The first decision under which defendants claim such reservation is that of Young, Commissioner, dated February 23, 1848—several years before the Indian title was extinguished. (Ab., p. 103.) The only effect of this decision is that the State was entitled to the alternate sections within five miles of the Des Moines river, throughout the whole extent of that river within the limits of Iowa, of *public* lands, remaining unsold, *and not otherwise disposed of, encumbered or appropriated.* He calls attention in terms to the fact that the grant is of undisposed of, unappropriated and unincumbered public lands, so that it is not possible to say that he decides that the lands which were then disposed of as Indian country by treaty passed by the grant, or should be reserved for the benefit of the grant.

The next decision under which defendants claim a reservation for the benefit of the River Grant is that of Secretary Walker, dated March 2, 1849. (Ab., p. 107.) This decision was also more than three years before the Indian title was extinguished. The only thing Mr. Walker decides is, "that the grant in question extends, as therein stated, on both sides of the river, from its source to its mouth, but not to lands on the river in the State of Missouri." The only effect of this decision is, that the grant extends throughout the State as to "public lands remaining unsold, and not otherwise disposed of, encumbered or appropriated." It cannot be said that Mr. Walker, in violation of the express terms of the grant, holds that it extends to lands in an Indian country, and by treaty encumbered, appropriated and disposed of, any more than he decides that it extends to lands entered with cash, or pre-empted and patented before the River Grant of 1846. It will not be presumed that an officer of the Government undertakes to appropriate, interfere with, or reserve for other purposes, lands set apart for the Indians by

treaty, unless he does so in plain and specific language; and i he does this, under the authorities above cited, his action i wholly void. Mr. Walker's decision, therefore, must be take as having sole reference to public, unappropriated, unincum bered lands. It is in no sense a reservation, nor an attempt t reserve lands set apart to the Indians, and in their possessio and occupation when the decision was made.

So of the order of Commissioner Young, based upon Sec retary Walker's decision, dated June 1, 1849, (Ab. p. 108) where he says to the Register and Receiver of the Land Offic at Iowa City:

"GENTLEMEN: The Secretary of the Treasury having de cided that the grant of the State of Iowa, under the act of the 8th of August, 1846, extended along the Des Moines river t its source, and that it did not stop at the Raccoon forks, as thi office had previously decided, you are hereby directed to with hold from sale all the lands situated in the odd numbered sec tions within five miles on each side of that river above Raccoo forks."

Does he mean thereby to direct the Register and Receive to withhold from sale lands within the Indian country, and thus already withheld by a solemn treaty? The order admits of nc such absurdity of construction. It refers to public lands, which might be sold if not withheld, and not to Indian lands, which could be neither surveyed, brought into the market, nor sold, and which the Commissioner then knew, and showed by his an- nual reports and maps, were actually reserved to and occupied by the Indians.

The same remarks apply with equal force to the decision of Secretary Ewing, dated April 6, 1850, (Ab., p. 111), more than two years before the Indian title was extinguished. He merely says: "As Congress is now in session, and may take action on the subject, it will be proper, in my opinion. to postpone any immediate steps for bringing into market the lands embraced in

the State's selections." Can this have any reference to Indian lands, which were not subject to sale and could not be brought into the market, and can it operate as an attempted reservation of such lands?

So of the order of Secretary Stuart, dated July 26, 185', (Ab., p. 115), more than a year before the Indian title was extinguished. He simply continues in force until the end of the then approaching session of Congress, the above decision of Secretary Ewing of April 6, 1850. We have seen that this decision had no reference to Indian lands, and did not attempt to reserve them for any purpose. No more does its continuance refer to Indian lands, nor attempt to reserve them.

This is the last decision or order bearing date *prior to May* May 15, 1856, the date of the railroad grant, under which plaintiff claims, which defendants produce, or claim to have operated as a reservation under the river grant of 1846. None of these orders reserve an acre of land within the Indian lands for the benefit of the river grant. None of them, as we have seen, attempt to do so.

In 1853, as above shown, *after* these orders and decisions, the Indian title was extinguished, and the lands in the Sioux country for the first time became public lands. Between the date of the extinguishment of the Indian title and the date of the railroad grant, May 15, 1856, there was no decision, order, or direction made or given, directing that any lands, either formerly within or without the Indian reservation, should be reserved under the river grant of 1846. The lands which had been Indian lands, therefore, remained *unreserved* at the date of the railroad grant, and passed under that grant.

What was *afterwards* done by the officers of the Government in attempting to reserve these Indian lands for the benefit of the river grant is of course unimportant, and need not be considered. A reservation after the passage of the railroad grant would not take the lands out of that grant.

The result is this: (1) If Secretaries Walker, Ewing and Stuart had attempted by their decisions, dated prior to the extinguishment of the Indian title, to reserve the Indian lands for the river grant, such orders would have been void, and would not have created a reservation. The Indian treaty was paramount to their decisions; it was "the law of the land," and lands covered by it could not be reserved by them under any other grant or for any other purpose. (2) But they did not attempt to reserve Indian lands. Their decisions, orders and acts admit of no such construction. The defendants' claim of a reservation of these Indian lands for the river grant, at the time the railroad grant was passed, is without any foundation either in law or in fact.

It will probably be urged that the orders and decisions upon which defendant in error relies to show a reservation under the river grant, were continuing orders and decisions, and although not operative at the time they were made to reserve Indian lands, yet when the Indian title was extinguished, they reached out and laid hold of the lands which thus became the subject of reservation, without any new or affirmative action of the officers of the Land Department.

The cases decided by this Court, cited *supra*, hold unmistakably that an act of Congress granting lands to a railroad to be built in part through Indian country, does not lay hold of Indian lands, and include them in the grant, when the Indian title is extinguished. *A fortiori*, orders and decisions of officers of the Land Department reserving public lands for the river grant, and having at the time they were made no reference to or effect upon Indian lands, cannot lay hold of such lands and reserve them when the Indian title is afterwards extinguished.

It is quite immaterial whether these lands were within the territory ceded by the first article of the treaty of 1830, or whether they were within the country then occupied by, and not ceded by the Sioux Indians. The treaty of 1830 was made,

as has been pointed out in the statement of facts, while the entire territory of Iowa remained in the possession of savage tribes of Indians. The object of that treaty was not to obtain lands for settlement, but to obtain lands for Indian purposes, and an Indian reservation. The rights of the tribes who then inhabited that tract and signed the treaty to a continuance of their possessory title in common with other Indians who might be assigned to the reservation, were guaranteed by Article 1 of the treaty. That their right and title in this tract was not extinguished is shown by the treaties made by the Government with the Iowas, Sacs and Foxes of Missouri, and other bands mentioned in the statement of facts, when it was desired to annex a small portion of the southwestern part of this tract to the State of Missouri; and by the guaranties of such treaties with these bands that the Indian title in this tract would be observed and respected until the assent of the Indians interested was given to its extinguishment.

It is further shown by the fact that treaties were made, as pointed out in the statement of facts, with all the other Indians except the Sioux to extinguish their interest in the tract ceded in 1830 for a reservation. No treaty having been made with the Sioux until 1853, they might rightfully continue in the possession of their portion of the reservation up to that time, and while rightfully in possession, the lands remained, so far as reserving, surveying or selling were concerned, as though they had never been ceded to the United States for any purpose whatever. Hence, whether the south boundary of the Sioux Indian country, as it existed up to 1853, and as shown by the maps of the Department, embraced a part of the reservation of 1830, or merely such lands as the treaty of that year guaranteed the Sioux Indians the continued possession of, the result must be precisely the same. In either event no reservation for the river grant could be made of the lands occupied by the Sioux Indians prior to the extinguishment of their title in 1853.

II.

Speaking of the Indian title, it is said in the opinion of the Court below :

"If the reservation was continued and recognized after the extinguishment of that title, it was just as valid as though it had been good from the beginning. The reservation may be regarded as dated from the time the Indian title was extinguished, if at and subsequent to that time, it did in fact exist, though before, it had been unauthorized."

This is quite true, but it is respectfully submitted, that there is no evidence anywhere in the record that any reservation of lands in the Indian country was continued and recognized after the extinguishment of the Indian title, nor that any such reservation did in fact exist after the extinguishment of that title. If the contrary of this statement is claimed for defendant in error, the facts relied upon to maintain such view should be pointed out to this court.

The court below, in its opinion, states that this court has decided in the cases referred to in the statement of facts herein, that the lands in question, meaning, we suppose, in suit, were reserved after the Indian title was extinguished, and that such reservation in fact existed May 15, 1856.

It is respectfully submitted that this is an erroneous statement of what this court has decided, or could decide in any case arising under the Des Moines river grant heretofore before it. Those cases will not now be reviewed *seriatim*. It is sufficient to state that in every one of them, except the Dumont case not reported, the lands in controversy were south of and outside of the Sioux Indian country when the orders of reservation were made, and that in all of such cases, except the Dumont case, there were not only the orders of reservation relied upon here, but the lands in controversy in those suits had actually been certified to the State of Iowa under such orders.

In the Dumont case, there was no pleading or proof in regard to the Indian title. This court, after a decision by a divided bench affirming the judgment below, refused to allow a Bill of Review to be filed based upon the Indian reservation or title, because, by sufficient diligence, all that that is shown in this suit might have been shown in that. There has been, therefore, no decision by this court which in any way determines the effect of the Indian title upon the supposed reservation of lands for the river grant.

III.

Was the reservation under the river grant up the east branch of the Des Moines river?

The facts bearing upon this question will not be here repeated. They show clearly, not only that the reservation was up that branch, but that the Land Department, before and after the railroad grant, refused to make any reservation whatever on the west branch.

In the former litigation arising under this river grant this question never has presented itself for determination. All lands involved in former suits have been along the main trunk of the Des Moines river below the confluence of the east and west branches, and of course the question never arose as to those lands, where the reservation was in fact.

The ground of the former decisions, as stated by this court itself, is that the lands then in litigation "had been *in fact* reserved by the executive officers of the Government upon a mistaken construction of a former grant made by the United States to the State of Iowa."

Leavenworth, etc., R. R. Co. v. U. S. 2 Otto, 748.

This being so, the question presented by the present suit is, where was the reservation *in fact* under this *mistaken construction* of the River Grant?

It will not do to assume that the reservation should have been up the west branch, which is in fact the Des Moines river proper. If there had been a grant up the river above the Raccoon fork, then undoubtedly the reservation should have been where the grant was, but there was no grant. The reservation, therefore, was a mistake, and nothing else. Within the limits of the mistake it was operative, and nowhere else. But there is no such thing as saying that the Land Department should have made the mistake of going up the west branch with its reservation, and therefore the reservation was on that branch. The mistake must be taken as it was found. As to lands reserved by mistake such mistake is operative, but as to no others.

The result is, that the reservation being up the east branch, in 1856, the date of the railroad grant, the lands on the west branch were non-reserved, and subject to that grant.

There is another reason why the reservation was up the east branch. Not only was it then treated as the Des Moines river proper, and laid down on the maps of the Department as such; but the west branch, as we have seen, was then wholly in Indian territory, and lands were not and could not be reserved for the river grant along it. A theoretical reservation is attempted in argument for the defendant in error, because the orders and decisions relied upon to establish a reservation referred to lands along the Des Moines river; but these orders and decisions must be taken in connection with the geographical knowledge of the Department at that time concerning the Des Moines river, and in connection with its acts under such orders and decisions. It was then treating the east branch as the Des Moines river proper, far north of the lands in controversy, and under its reservation it certified lands upon that branch. When, therefore, these orders and decisions make mention of the Des Moines river, they must be taken as having reference to the east branch, along which lands were certified contemporaneously with such orders and decisions.

The fact should not be lost sight of, that the sole and only claim of title to the lands in controversy made by the defendant in error, is under the act of Congress of July 12, 1862, extending the River Grant. This grant is six years later than that under which the plaintiffs in error claim, and plaintiffs in error are entitled, under their prior grant, to all lands within the geographical limits of that grant, not reserved, or otherwise disposed of, within the meaning of the proviso already quoted.

The primary question, therefore, is what lands were reserved from the operation of the railroad grant? That grant is inoperative as to such lands, and such lands only. It does not matter by what mistake or misapprehension lands were not reserved, for such lands as were not reserved pass under this grant, and cannot pass under the subsequent grant of 1862, extending the River Grant to the northern line of Iowa.

As late as February 29, 1865, in a letter to the Commissioner of the General Land Office discussing the basis upon which the River Grant should be adjusted with the authorized agents of the State of Iowa, Hon. J. P. Usher, Secretary of the Interior, says of the lands certified on the east branch:

"These lands lying adjacent to the stream now known as the east fork of the Des Moines river, but then known as the Des Moines river itself, were included in approved lists prepared under the act of Congress of August 8, 1846, and have been regarded as confirmed to the State by the joint resolution of March 2, 1861." (Record, 45.)

As the grant itself was settled substantially upon the basis laid down by Mr. Secretary Usher, in this letter, it is quite apparent that it was always maintained by the Department, and was conceded by this State, that the reservation under which defendant in error claims was up the east branch of the river.

The court, below, by its opinion, refer to this branch of the case as follows:

"It is next argued that the reservation of the lands upon which defendant's title was based was not upon the Des Moines river, but upon the tributary called in the record the east branch, and sometimes designated upon the maps as Boone river. This position as to the facts is based upon the certification of about 11,000 acres upon the east branch in 1853, and the want of knowledge exhibited in many instances by executive officers of the Government, which would enable them to determine which stream was the main river. The grant is of lands upon the river, not upon the branch.

"The lands in question are upon the main river. The reservations were made upon the grant, and they must have extended to the lands on the river, including the lands in controversy. The certification of lands upon the east branch was an error, and was afterwards corrected. If defendant or the State gained anything by the mistake, it is not a ground upon which the plaintiff can defeat defendant's title. Surely it cannot be maintained that the grant of lands upon the river is affected by the mistaken selection upon the east branch, even should such selection operate to the prejudice of plaintiffs. The grant cannot be defeated in that way. The defendant holds under the grant, and mistakes of the officers of the Government cannot change the subject of the grant."

The court below in thus discussing this question, evidently labored under several mistakes as to the questions of fact involved. The east branch never was designated upon the maps or anywhere else as Boone river. There is nothing in the record to warrant any such conclusion or intimation. It is, moreover, a grave error to say that the position of plaintiffs in error, that the reservation was upon the east branch "is based upon the certification of about 11,000 acres upon that branch in 1853, and the want of knowledge exhibited in many instances by executive officers of the Government, that would enable them to determine which stream was the main river."

The certification of the 11,000 acres, as has already been pointed out, is only one of many circumstances upon which defendants in error rely to show that the reservation was up the east branch. The want of knowledge by the executive officers as to what was the Des Moines river proper is wholly immaterial, except in so far as, acting upon want of knowledge, they *in fact* made a reservation under the act of 1846. Wherever, in fact, they made such reservation, and the same was continued up to 1856, they took lands out of the railroad grant under the proviso annexed thereto. If now it is said that their want of knowledge is to defeat the reservation where it was in fact made, and is to make it operative where it did not in fact exist when the railroad grant was passed, then the same want of knowledge which made their reservation inoperative on the east branch ought to make it inoperative *in toto*, because, had they known what the law was, there was no occasion for any reservation at all.

The question is not want of knowledge as to the river proper, or as to the law, but it is, what reservation was in fact made, arising from the insufficient knowledge of the executive officers, not only as to where the main river was, but as to what the law itself was.

Of course, the reservation and certification on the east branch was "erroneous," as said by the court below, but it is also true that a reservation or certification under the grant of 1846 was equally erroneous anywhere above the Raccoon fork. The point not to be lost sight of, is that *wherever that error was operative lands were reserved, and not elsewhere.*

It is respectfully submitted that there is a strange confusion of ideas expressed in the opinion of the court below in the language: "The reservations were made upon the grant, and they must have extended to the lands on the river, including the lands in controversy." This appears to refer to the grant of 1846, for that is the grant upon which "the reservations were

made," and yet that grant did not extend above the Raccoon fork. The reservation, as the court has held, was made "upon a mistaken construction of that grant." It cannot be argued, as the court below seems to do, that a reservation above the Raccoon fork upon a non-existent grant must have the same force and effect as though the grant existed along the river from its mouth to its source.

So, in the language of the court below, "the grant cannot be defeated in that way." What grant is here referred to? If the grant of 1846 is meant, it was defeated above the Raccoon fork by its own terms, as declared by this court. If the grant of 1862 is intended, under which alone defendant in error claims title, then that grant, six years later in point of time than that under which plaintiffs in error claim, only took such lands within the geographical limits of the railroad grant of 1856 as were reserved from its operation before its passage. To say that this grant of 1862 cannot be defeated by the railroad grant on account of mistakes of the executive officers is to lose sight of the fact that it has no operation whatever within the geographical limits of the railroad grant, except through the mistakes of such executive officers in administering the grant of 1846.

Thus we come back to the question, where were these mistakes of the executive officers operative, and where, in fact, did they reserve lands? That is the fundamental question in this case. The evidence shows that they reserved lands up the east branch, and nowhere else. Hence the railroad took the non-reserved lands on the west branch.

IV.

The case at bar is distinguishable not only as to the matters already discussed, from all cases arising under the river grant heretofore decided by this court; but it is further distinguish- from all other cases so decided, except the Dumont case, in this:

The Wolcott case, 5 Wallace, 681; the Williams case, 17 Wall., 144; the Homestead case, 17 Wall., 153, cited supra;

the case of Reilley v. Welles, Dec. Term, 1869, not reported, and that of Woolsey v. Chapman, 11 Otto, 755, all related to lands which were certified to the State of Iowa prior to 1854 under the orders and decisions reserving land for the river grant, and the title to which lands, in litigation in these cases, was, therefore, vested in the State of Iowa by the joint resolution of March 3, 1861. This fact appears in the opinion of the court itself in all of these reported cases. Such cases will not be reviewed *seriatim* unless this statement is called in controversy by the learned counsel for the defendant in error. We feel certain that it will not be.

The lands in this case were not certified until after the 1st of January, 1854, (Record 105), and were not certified to the State under the river grant until 1874. The question here involved is not what title did the defendant in error take under the joint resolution of 1861, but what title did it take under the act of July 12, 1862 to land situated as above stated?

The orders and decisions under which defendant in error claims a reservation merely determine generally, that lands should be reserved above the Raccoon Fork under the River Grant. As to lands certified under these orders and decisions, they were segregated, and their reservation made certain and distinct. The entire reservation remained in force only so long as the orders and decisions making such reservation remained in force. The last of these decisions was that of Secretary Stuart, dated July 26, 1851, (Record 101) in which the honorable Secretary directed the lands theretofore reserved to be withheld from market until the end of the then approaching session of Congress, in order to give the State the opportunity of petitioning for an extention of the grant by law. This decision of Mr. Secretary Stuart held that the grant did not extend above the Raccoon Fork. However, after this decision, lands continued to be certified under the River Grant up to December 30, 1853, as already stated.

Now, as this order continued the reservation in force only until the end of the then approaching session of Congress, it might well be claimed that the reservation was terminated at the end of that session, except as to lands thereafter certified, which by certification became specially reserved. For there was no order continuing the general reservation after the decision of Secretary Stuart. But the question of general reservation does not stop here. As already pointed out, the President of the Des Moines Navigation and Railroad Company, the then beneficiary of the River Grant, applied to Commissioner Hendricks, January 9, 1856, asking specifically for a further reservation of lands under the River Grant. (Record 76-7).

March 21st, the Commissioner replied to that communication, declining to comply with such request, and holding that the River Grant only extended to the Raccoon Fork, and was therefore satisfied.

Upon the heels of this refusal of Commissioner Hendricks to reserve lands for the River Grant, the Railroad Grant was passed, with no reservation for the River Grant outside of lands actually certified. For, if a decision of the Land Department that lands should be reserved for the River Grant created a reservation, it seems as certain that a subsequent decision of the same Department that lands should not be reserved for that grant did away with the reservation, as it is certain that one from one leaves nothing.

After the passage of the Railroad Grant in 1856, came the decision of this court in the Litchfield case in 1859, that the River Grant did not extend above the Raccoon Fork. Thereupon the construction and administration of both the Railroad and River Grants were changed, and lands within the geographical limits of the Railroad Grant, where it crossed the River Grant, were treated as belonging to the former Grant, and certified to the State under it.

In this decision, the State and the defendant in error ac-

quiesced, and under the facts already stated, received indemnity lands for that portion of the River Grant thus certified to the Railroad Grant.

That the defendant in error was bound by the action of the State and its agent in assenting to and receiving such indemnity lands, seems clear. The act of the Legislature of Iowa, of March 31, 1868, ratified and confirmed the settlement by which indemnity lands were received, and continued the River Grant to the defendant in error only upon the condition precedent that it should also assent to such settlement, as it had already done by its agent. It does not now lie with the defendant in error to assert either that its agent had not authority, or that it is not bound by the action of the State, and this legislative enactment. Having received and retained the indemnity lands with undoubted knowledge of all the facts under which it got them, they must be conclusively held to have ratified the methods by which it received such lands, and to be bound by them.

The Dubuque & Sioux City Railroad Company, plaintiff in error, having gone on and built its road, and earned the lands in controversy; its grant having been fully administered and closed, so that there are no other lands which it can receive, can it, in view of the foregoing facts and circumstances, be deprived of its lands honestly earned, by proceedings set on foot by the defendant in error in 1874, sixteen years after the lands in suit were certified under the Railroad Grant, and many years after a solemn settlement by which the State, and the beneficiaries under these respective grants, had their rights ascertained and determined? The plaintiffs in error insist that such is not the law.

V.

It is hardly necessary to notice the attack of the defendant in error upon the title of plaintiffs in error. Nor is it necessary for this court to decide that question in the disposition of this

case. The vital question in the case is, shall defendant in error receive these lands under the River Grant? If it is enfitled to them under that grant, that ends the case. If it is not entitled to them, that ends the case as to defendant, and it should not be permitted to impeach plaintiff upon a certificate obtained from the General Government, and the State officers without color or authority of law.

This suit was commenced in the State Court, and the pleadings are covered by the statutes of the State of Iowa. The Code of Iowa, 1873, provides:

Sec. 2645. Pleadings are the written statements by the parties of their respective claims and defences, and are:

1. The petition of the plaintiff.
2. The demurrer or answer of the defendant.
3. The demurrer or reply of the plaintiff.
4. The demurrer of the defendant.

Sec. 2712. Every material allegation in a pleading not controverted by a subsequent pleading, shall, for the purposes of the action, be deemed true.

The plaintiffs in error, by the sixth paragraph of their petition or bill, allege that the lands in controversy are within fifteen miles of the line of railroad, and were selected for the railroad in 1856. (Record 2,)

This is admitted by paragraph 4 of the answer. (Record 4.)

It is also alleged by paragraph 11 of the petition or bill, that the lands were within and subject to plaintiff's grant and not reserved in any manner at the passage of said grant. (Record 3.)

Paragraph 9 of the answer merely denies that they were subject to the grant of 1856, and denies that they were not reserved. It does not deny that they were within the grant. There is no denial in the answer of that allegation. It is a ma-

terial allegation and under the statute it stands admitted. It appears, therefore, from the pleadings, that the lands in controversy are within the railroad grant. Whether subject to it or not must depend upon the questions already discussed.

Outside of the pleadings, it must be stated that many portions of the record were made by agreement with a view to abbreviate immaterial details and matters as much as possible, and by such agreed portions it is shown that,

"Including the lands in controversy, there were certified to Iowa under plaintiff's grant, December 27, 1858, 480,929 acres of land, and that, taking said lands clean from east to west at the rate of six sections per mile of railroad built, the lands in controversy were earned, if within plaintiff's grant, by building the sections of railroad certified to on pages 86 and 87 of the Abstract." (Being 74 and 75 of the Record in this case.) (Record 76 and 156.)

These admissions must stand as conclusive evidence of the title of plaintiffs in error, unless the lands are excluded from the railroad grant, because reserved under the river grant. By reason of these admissions, none of the muniments of title of plaintiffs in error, except the act of Congress making the grant, and the act of the Legislature of Iowa, accepting and disposing of it, appear in the Record. These two acts vested a perfect title in the plaintiffs in error when the lands were earned under the grant, the grant by Congress being *in praesenti*.

Leavenworth, etc., R. R. Co. v. U. S. 2 Otto, 740.

And the record admits that the lands were earned, if within the grant.

The case last cited *supra*, is that upon which the learned counsel for defendant in error principally relies to show that the plaintiff in error, the Dubuque & Sioux City Railroad Co. could only take indemnity land coterminous with its road constructed. The construction given by this court in that case of

the Kansas grant, was based upon the fact that when that grant was made, lands which might be included within it remained in the market, subject to purchase and entry, until the route of the road to be built by the grant was definitely fixed; hence the indemnity lands authorized by the Kansas grant were held to be in lieu only of such lands as might be disposed of between the passage of the grant and the location of the road to be built by it. This construction gave force, effect and meaning to the indemnity clause in the Kansas grant; but as was remarked by this court in that case, "*formerly* lands which would probably be affected, were, as soon as it (the grant) was made, if not in advance of it, withdrawn from the market." (2 Otto,) 748.)

Such was the practice at the time the Iowa railroad grant was passed, in 1856. On the 10th of May of that year, being the day the grant was passed, Commissioner Hendricks withdrew all lands from the market which might be affected by the grant. (Record, 52.)

May 15, the date of the approval of this grant, he continued the withdrawal for the adjustment of the grant. (Record, 52.)

No part of the lands were restored to market until the 24th of December, 1857, after the definite location of the railroad from Dubuque to Sioux City. (Record, 52–4.)

If, therefore, the construction applied to the Kansas grant, under a precisely opposite practice of the Land Department as to withdrawing lands, is to be applied to the railroad grant in this case, there is absolutely nothing for the indemnity clause in the act of 1856 to operate upon. It was a mere idle and meaningless thing.

That statutes must be construed so as to give effect to every clause and word, so as to make every part of them operative, if possible, see

22 Pick, 573.
Hutchins v. Niblo, 4 Blackf., 150.
Attorney General ex rel., etc., v. R. R. Co., 2 Mich. (Gibbs), 142.
Levessee v. Reynolds, 13 Iowa, 311.

This being so, the grant of 1856 must be construed to give indemnity for lands disposed of prior to its passage.

The grant for a railroad from Dubuque to Sioux City, as well as the grant for three other roads in the State of Iowa covered by the act of May 15, 1856, have been administered by the Land Department of the United States upon the basis of six sections per mile for every mile of road built, including full indemnity for all lands disposed of prior to the passage of the grant. This administration has been acquiesced in for a quarter of a century. A very large portion of Iowa has been settled during this time, and titles without number have been acquired in good faith under such administration of railroad grants. Are these titles to be overturned at the suggestion of an intruder at this late day? If so, any decision of this court having that effect will cause, throughout the entire length and breadth of the State of Iowa, the same confusion of titles, the same mischiefs and hardships, which have arisen under the River Grant.

CHARLES A. CLARK,
For Plaintiffs in Error.

104-329

OFFICE SUPREME COURT U. S.
FILED
OCT 23 1883
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1883.

NO. 71.

THE DUBUQUE & SIOUX CITY RAILROAD COMPANY and THE IOWA HOMESTEAD COMPANY,

Plaintiffs in Error,

vs.

THE DES MOINES VALLEY RAILROAD COMPANY.

ERROR TO THE SUPREME COURT OF IOWA.

ARGUMENT FOR DEFENDANTS.

CHARLES A. CLARK.
SOLICITOR FOR PLAINTIFFS.

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vs.

THE DES MOINES VALLEY RAILROAD COMPANY.

Error to the Supreme Court of Iowa.

ARGUMENT FOR DEFENDANT.

The plaintiffs claim the land in controversy as grantees of the state of Iowa, and claim that said lands inured to said state for railroad purposes under and by virtue of an act of congress approved May 15, 1856, which is set out in full on page 9 of the record.

The first point in the defense is, that the lands in controversy were expressly excepted out of the operation of the act of 1856 by the proviso contained in the first section of the act, which is as follows: "And provided, further, that any and all lands heretofore reserved to the United States by any act of congress, *or in any other manner by competent authority*, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be and the same are hereby reserved from the operation of this act," etc.

The lands in controversy, it is conceded, are in the odd numbered sections within five miles of the Des Moines river.

By act approved August 8, 1846, congress granted to the then territory of Iowa, to aid in the improvement of the navigation of the Des Moines river, a moiety of the lands within five miles of, and on either side of, the river, as was claimed by the state, from the mouth of the river to the northern boundary of the state. The state designated the odd numbered sections, and the department reserved the lands from sale and set them apart for the work of internal improvement designated by the act. Record, page 86. This court, in December, 1859, in the case of *The Dubuque & Sioux City R. R. Co. vs. Litchfield*, decided that this grant of land made to the state of Iowa for the improvement of the Des Moines river, approved August 8, 1846, did not extend to the north boundary of the state, as claimed by the state of Iowa, but that it embraced only the lands below the Raccoon fork of the Des Moines river. 23 Howard, 66. The department, however, continued the reservation, in order that congress might take some action in the premises. Record, page 118, Exhibit 135.

By act approved July 12, 1862, congress extended the grant of 1846, and confirmed the title of the state to all the lands within five miles of the Des Moines river in the alternate sections, to the northern boundary of the state, and consented to a diversion of the lands to build a railroad up and along the river.

See—

Record, page 117, Exhibit 55.

Under this act of 1862 the lands in controversy were certified to the state and were by the state granted and certified to the defendant, the Des Moines Valley Railroad Company.

Record, pages 135 and 136.

In May, 1860, after the Litchfield decision, the agent of the

Dubuque & Sioux City R. R. Co. made a claim in behalf of said company to have the lands in controversy certified to the state under the grant of 1856.

This the department expressly refused on the ground that the lands were reserved.

Record, page 120, Exhibits 59, 60 and 61.

This court has decided the question of the reservation of these lands, and that they did not pass to the state of Iowa under the act of July 15, 1856, in the following well considered cases:

Wolcott vs. Des Moines Co., 5 Wallace, 681.
Riley vs. Wells, not reported.
Williams vs. Baker, 17 Wallace, 144.
Iowa Homestead Co. vs. R. R. Co., 17 Wallace, 152.

In order to avoid the force of the above adjudications, plaintiff claims the following novel propositions:

1st. That the reservation of lands above the Raccoon forks of the Des Moines river by the department of the interior, only extends to lands certified to the state prior to the railroad grant of 1856.

2d. That because certain lands were erroneously certified to the state under the river grant, which were located on the east fork of the Des Moines river, that, therefore, the reservation must also be taken to have been intended to be equally erroneous.

3d. It is claimed that the lands were not subject to grant in 1846, because of an Indian reservation, and that, therefore, a reservation of them from sale or grant was in derogation of the Indian title and was void.

The questions involved in this Des Moines river title are really not very intricate when properly understood. The only difficulty

we apprehend is in the fact that those who make an adverse claim to these lands continually attempt to befog the cases and load them down with a mass of redundant and immaterial matter. If the members of this court not familiar with this title will be patient with us, we promise to take up, one by one, the novelties introduced in this case, and to show in connection with the former adjudications that these novelties have no legal effect whatever in disturbing this title.

And first, we discuss the novel proposition—

WHETHER OR NOT THE ORDERS OF RESERVATION UNDER THE ACT OF 1846 EMBRACED ONLY THE LANDS ACTUALLY CERTIFIED UNDER THAT ACT.

And first we call attention to the fact that the act of certification was subsequent to, and in pursuance of, and independent of the order of reservation. The error, in the mind of the counsel for plaintiff is, as to what constituted the reservation, and in supposing that until the lands were actually certified to the state as inuring under the grant of 1846, they were not reserved. Now, the question as to what constituted the reservation of these lands, was decided by this court in the case of *Wolcott vs. The Des Moines Navigation and Railroad Company*, and was authoritatively settled. The court says, 5 Wallace, 688:

> It has been argued that these lands had not been reserved by competent authority, and hence that the reservation was nugatory. As we have seen, they were reserved from sale for the special purpose of aiding in the improvement of the Des Moines river—*first by the secretary of the treasury, when the land department was under his control, and again by the secretary of the interior*, after the establishment of this department, to which the duties were assigned, and afterwards continued by this department under instructions from the President and Cabinet.

Now what did the court mean by the use of this language in the Wolcott case? The court said that the lands in controversy in the Wolcott case were reserved for the purpose of aiding in the improvement of the Des Moines river—first by the

secretary of the treasury and again by the secretary of the interior. Now the lands in controversy in the Wolcott case had none of them ever been surveyed, much less certified to the state at the date of the several orders of reservation to which the Supreme Court here refers. The order of reservation made by the secretary of the treasury when the land department was under his supervision, was on June 1, 1849, and the order of the secretary of the interior was made in the year 1850. (See exhibit 13, page 94, and Exhibit 18, page 96, of record.)

Exhibit No. 13, dated June 1, 1849, is the letter of Richard M. Young, commissioner of the general land office, to the effect that the surveys had at the time only progressed as far as township 83, N. R. 26, W. The selections approved by Stuart on the 30th October, 1851, extended only as far north as township 83, range 26. This township 83, range 26, is the line of the Northwestern railroad and is far south of the limits of the Dubuque & Sioux City Railroad Company.

The point that we make is, that the court in the case of Wolcott based the fact of reservation exclusively and entirely upon the orders of the department of the interior made long before there was any public survey of the lands in controversy in that case. The land in controversy in that case was not certified to the state until the year 1853. The counsel for appellant has claimed that the decision of the department as to the extent of the grant was not a reservation. But these decisions of the department were also accompanied with a distinct order by and to the proper authority *to reserve the land from sale.* For instance Richard M. Young, as register of the state land office, on the 1st of June, 1849, issued an order to the register and receiver at Iowa City, directing him to withhold from sale all the lands situated in the odd numbered sections within five miles on each side of the Des Moines river above the Raccoon forks, and recited as the basis of that order the decision of the secretary of the treasury that the grant to the state under the act of August 8, 1846, extended along the Des Moines river to

its source, and that it did not stop at the Raccoon forks. It is true that the diagram enclosed only extended to township 83 north, and range 26 west, for the reason that the surveys had not progressed any further in that direction at that time. On the 14th of January, 1850, the commissioner of the general land office, in his report to the secretary of the interior, reported that the amount of lands charged to the state of Iowa was 824,070 acres already certified under the act of 1846, and added—

> This amount, in accordance with the decision of the secretary of the treasury of the 2d of March, 1849, will be increased by the unadjusted portion of the grant for the improvement of the Des Moines river, situated between the Raccoon forks and the source of said river, estimated to contain about 900,000 acres. (See Exhibit 17, p. 96, record.)

Again, Secretary Ewing, on the 6th day of April, 1850, says to the commissioner of the general land office that—

> If in any report to congress you have recognized the grant as extending to the source of the river, it will be proper to correct it, that congress, if they see fit, may extend the grant.

He refuses to concur in the opinion of the secretary of the treasury, but says distinctly to the register "that it would be proper, in his opinion, to postpone any immediate steps to bring into market the lands embraced in the state's selections." The state's selections had already been made of all the lands in the alternate sections, from the mouth to the source of the river, and lest there should be any doubt upon that subject, the president, secretary and treasurer of the board of public works of the state of Iowa, on the 15th of February, 1851, addressed a communication to the commissioner of the general land office, in which occurs the following language:

> To avoid, however, the difficulty suggested by the honorable secretary of the interior, but not admitting that a selection of said lands has not been made in accordance with said act, we, the undersigned, hereby notify the commissioner of the general land office, that we have selected all the lands within five miles of the river Des Moines that are embraced within the odd sections, from the mouth of said river to the source of the same, not embraced in the selection heretofore made by the territorial agents,

as granted to the territory of Iowa to aid in the improvement of the Des Moines river from its mouth to the Raccoon fork, by the act of congress of the 8th of August, 1846. (See Exhibit 20, p. 99, record.)

Again, on the 22d of February, 1851, William Patterson, president of the board of public works, addressed a communication to the secretary of the interior, making a similar demand. (See Exhibit 22, p. 100, record.) This is followed by the order of Secretary Stuart, of October 29, 1851, in the which he directs the commissioner of the general land office to report for approval lists of the alternate sections claimed by the state of Iowa above the Raccoon forks, not only as far as the surveys *have* progressed, *but as they may thereafter be completed and returned.* (See p. 101, record, Exhibit 25.)

It is conceded that as late as the year 1853, this order was complied with by the subordinate officers of the interior department, and that lands were certified in pursuance thereof. But we have on the 7th January, 1854, a further certification of lands within five miles of the Des Moines river in the alternate sections as inuring to the state under the act of August 8, 1846, and directing a cancellation of a certificate approved under the act of September 4, 1841, known as the 500,000 acre grant. (See Exhibit No. 40, p. 107, record.)

Again, we have in Exhibit 41 an act passed by the general assembly of the state of Iowa, approved January 5, 1855, acknowledging the title of the Des Moines Navigation Company to all these lands in the 500,000 acre grant, and providing for the negotiation and purchase of them by the state to satisfy certain sales theretofore erroneously made.

But we have conclusive evidence that these lands were expressly reserved from the operation of the act of 1856, under which plaintiff claims. We have, on page 108 of the record, Exhibit 43, the letter of Mr. Hendricks, commissioner of the general land office, with table enclosed (see p. 109, record), dated May 12, 1856, containing an estimate of the lands that would pass to the state of Iowa, by virtue of the act of congress then pending, and afterwards approved May 15, 1856.

This estimate does not purport to deduct from the lands that the state would receive, under the act of 1856, merely those that had been heretofore certified by the state, but it gives—first, an estimate of the lands in place along the lines of the several routes of railroads, and deducts therefrom for the Des Moines river grant *four* areas where the river crosses *four* times the lines of these roads—153,600 acres. And we also have in evidence a similar statement of the commissioner of the general land office, of date March 3, 1857, pp. 114–15, record, estimating the lands claimed for the Des Moines river grant, above the Raccoon forks, at 151,800 acres. And we further have, on pp. 121–2, record, the certificate of the chairman of the house committee on public lands, certifying that the estimates of lands which would be conveyed by the bill, No. 17, approved May 15, 1856, granting lands to Iowa for certain railroads, were founded on the construction of the Des Moines river grant, to the effect that that grant extended to the source of the Des Moines river, and the alternate sections in a strip five miles in width on each side of the Des Moines river, above as well as below the Raccoon forks, were reported as *excluded* from the amount of land that would pass by that bill and were reserved from its operation.

Now we call the attention of the court particularly to this evidence. The title of the defendants in this case rests upon the act 1862, which undoubtedly grants these lands, if the United States at that date retained the title thereto. And the question is, what was the intention of congress, when it enacted the proviso that we find in the railroad grant of 1856? Or, in other words, what lands were intended to be granted, and what lands were intended to be reserved, by the language of that act. This act and its proviso, according to the rules laid down by the United States Supreme Court, is to be most strongly construed against the grantees. We find this railroad interest before congress and before the committee on public lands of the house of representatives, securing the passage of the act of

1856, upon the express representation made by means of these certificates from the department of the interior, that this act of 1856 *would not, and was not intended* to embrace the lands claimed by the state in the alternate sections within five miles of the Des Moines river. The attempt now to claim these lands is simply a fraud—a gross, palpable fraud upon the part of this railroad company. The Supreme Court of the United States, in the year 1849, in delivering its opinion in the case of the *Dubuque & Sioux City Railroad vs. Litchfield*, 23 Howard, 88, cites the fact that whilst the act of 1846 was pending before congress, that A. C. Dodge procured from the department of the interior an estimate of the lands that would be embraced in the grant of the 8th of August, 1846, and that such estimate embraced only the lands below the Raccoon forks of the Des Moines river. And the Supreme Court in its decision makes this a controlling fact. The same Dubuque & Pacific Railroad company, in that litigation, claimed that the estimate of the number of acres of land that would pass by the grant of 1846, should control in the construction of *that act*. And now we bring home to this plaintiff the cup that was then prepared by its attorneys, and that the claimants under the act of '46 were then compelled to take. And we insist that what was a rule of construction of the act of 1846, as then insisted upon by the Dubuque & Sioux City Railroad Company, shall now be a rule of construction of the act of 1856 for this same Dubuque & Pacific Railroad Company. If these lands did not pass and were not intended to pass under the act of 1856, the United States retained title to them and granted them by the act of 1862, and this is an end to the controversy.

In none of the decisions heretofore made by this court has the question of the certification of lands, under the act of 1846, had anything to do with the question of their reservation. The act of 1856 excepts out of its operation all lands set apart by any competent authority for any work of internal improvement. Now, upon what considerations has this court declared

that this proviso excluded these Des Moines river lands? Let us look at the cases. The first decision was the Wolcott case, 5 Wallace, 681, and the court places the question of reservation upon the following facts: "The lands were reserved from sale for the special purpose of aiding in the improvement of the Des Moines river—*first*, by the secretary of the treasury, and again by the secretary of the interior, and afterwards continued by this department, under instructions from the president and cabinet." The language of the court relates to the *reservation* of the lands, *not* to the certification or survey of them.

In the Wells-Riley case, the patent of Riley was *not* canceled because the land had been *certified* to the state under the act of 1846, but because, as the court says, "the land had been withdrawn from sale and entry on account of a difference of opinion among the officers of the land department as to the extent of the original grant by congress, and that the act of the register, in permitting the land to be entered, was void, as was also the issuing of the patent."

So in the case of *Williams vs. Baker*, 17 Wal., 152, this court based its decision entirely upon the fact that the land in question had been withdrawn from public sale or private entry. The court says: "The reasons for this withdrawal of the land from public sale or private entry, are stated at large in the opinion of the court in *Wolcott vs. Des Moines Company*, and need not be repeated. The point of the reservation was very material in that case, and we have seen nothing in the present one, either in the facts or in the argument, to distinguish it." And Justice MILLER concludes his opinion by the following comprehensive remarks: "We therefore reaffirm first, that neither the state of Iowa nor the railroad companies, for whose benefit the grant of 1856 was made, took any title by that act to the *lands then claimed* to belong to the Des Moines river grant of 1846; and second, that by the joint resolution of 1861 and the act of 1862, the state of Iowa did receive the title for the use of those to whom she had sold them as part of that grant, and for such other purposes as had become proper under that grant."

It will be observed here that the court makes no distinction between lands certified to the state as Des Moines river lands and lands not certified to the state as Des Moines river lands, but speaks of the whole body of the lands that were *claimed* to belong to the Des Moines river grant.

Again, in the case of the *Iowa Homestead Company vs. The Valley Railroad* (17 Wal., 153), Mr. Justice DAVIS, in delivering the opinion of the court, after referring to the Wolcott case and other cases decided by the court, proceeds to say: "It is therefore no longer an open question that neither the state of Iowa nor the railroad companies, for whose benefit the grant of 1856 was made, took any title by that act to the lands *then claimed to belong* to the Des Moines river grant of 1846, and that the joint resolution of 2d of March, 1861, and the act of 12th of July, 1862, transferred the title from the United States and vested it in the state of Iowa for the use of its grantees under the river grant."

Now what does the court mean when it says that the railroad companies, for whose benefit the grant of 1856 was made, took no title by that act to the lands *then claimed to belong to the Des Moines river grant of 1846*, and that the joint resolution of the 2d of March, 1861, and the act of 12th of July, 1862, transferred the title from the United States and vested it in the state of Iowa? The act of 12th of July, 1862, here referred to by the court, had relation only to those lands claimed to belong to the Des Moines river grant of 1846, which *had not been certified* to the state under the Des Moines river grant.

The joint resolution of March 2, 1861, released to the state the certified lands, and the act of July 2, 1862, conveyed to the state the uncertified lands that had been claimed to belong to the Des Moines river grant of 1846.

The Supreme Court of the United States has thus decided expressly that both classes of lands—both the certified and uncertified—were excepted out of the operation of the act of 1856, for the reason that they were lands then claimed to belong to the Des Moines river grant of 1846.

Now let us look at the facts recited in the court in the Wolcott case, and as fully set out and proved by the record in this case. These facts are as follows:

That after the passage of the act of 1846, the question arose before the commissioner of the land office, whether the grant of the odd sections within the five miles of the river extended above the Raccoon fork.

The commissioner determined that it did, and that it extended throughout the whole line of the river within the limits of Iowa. It appears, however, that afterwards, on the 19th of June, 1848, a proclamation was issued by the president, countersigned by the secretary, ordering a sale, among other lands, of some of these odd sections, lying above the fork, and which was to take place in the following October. On the attention of the secretary of the treasury being called to the subject, he, after an examination of the act, determined that upon a true construction of it, the grant extended above the Raccoon fork, and directed that the odd sections should be reserved from the sale, which was done accordingly, and the state of Iowa duly notified. This was on the 16th day of June, 1849. On the 6th of April, 1850, the secretary of the interior, whose department had in the meantime been established, and to which the supervision and control of the general land office had been assigned, reversed the previous decision of the secretary of the treasury, and determined that the grant did not extend beyond the Raccoon fork. But he directed that the lands should be reserved from sale which were embraced within the state's selections. The question was then brought before the president, and was referred by him to the attorney general, who differed with the secretary of the interior, and concurred with the secretary of the treasury. But before the promulgation of this decision the president (Taylor) died, and a new cabinet coming in—and among others a new attorney general—he overruled the decision of his predecessor, and affirmed that of the secretary of the interior. The cause was then brought before the new president and cabinet, and the result is stated by the then secretary of the interior, under date of October 29, 1851, which was, "That in view of the great conflict of opinion among the executive officers of the government, and also in view of the opinion of several eminent jurists, which have been presented in favor of the construction contended for by the state, I am willing to recognize the claim of the state, and to approve of the selections, without prejudice to the rights, if any there should be, of other parties."

Under this arrangement the secretary of the interior approved of the odd section above the fork as certified, according to the act of congress, till in December, 1853, the number of acres approved amounted to over 271,572.

The foregoing is a substantial quotation from the opinion in the Wolcott case.

Now the claim of the state referred to by the secretary of the interior in his communication of October 29, 1851, and which he was willing to recognize, was the claim of the state to all of the lands in the odd sections within the limits of the state above the Raccoon fork. The decision of the commissioner of the general land office, here referred to, is set out in full on page 90 of the record, and is as follows:

> A question has arisen as to the extent of the grant made to Iowa by the act of 8th of August, 1846, and the opinion of this office has been requested on *that point*.
>
> By the terms of the law, the grant is of an equal moiety in alternate sections, of the public lands remaining unsold, and not otherwise disposed of, incumbered or appropriated, in a strip of five miles in width on each side of the river, to be selected within said territory. * * * * Hence the state is entitled to the alternate sections within five miles of the Des Moines river throughout the whole extent of that river, within the limits of Iowa.

And the "*claim of the state*," thus recognized by the department, continued to be the same until long after the passage of the act of the 15th of May, 1856. There is no document emanating from the state of Iowa at any time, in anywise modifying this "claim of the state." We have already shown that the legislature of the state recognized it as existing by an act approved January 5, 1855, entitled, "An act for the relief of certain settlers on the river lands."

In 1858 the general assembly of the state of Iowa made a grant of the lands then claimed by the state above the Raccoon forks to the Des Moines Valley Railroad Company, then known as the Keokuk, Fort Des Moines & Minnesota Railroad Company. Now this grant was not of any lands above the Raccoon forks that had been certified to the state, because all such had been released to the Des Moines Navigation Company, but it was a grant of these very uncertified lands that are now claimed by appellants not to have been reserved. By joint resolutions of the two houses of the general assembly of the state of Iowa, approved at the same time, March 22, 1858,

Charles Mason was appointed a commissioner on the part of the state of Iowa to obtain a certification of these lands under the act of the 8th of August, 1846. (See Exhibit 52, p. 114, record.)

Exhibits 53 and 54 (record, page 116) show a correspondence between Mr. Mason and Mr. Thompson, then secretary of the interior, in which Mr. Thompson proposes to certify all the lands in the alternate sections within five miles of the Des Moines river to the north line of the state, on condition that Mr. Mason, in behalf of the state, would release the lands in Minnesota. This, Mr. Mason expressly declined to do, claiming in behalf of the state in the very language of the original communication of the board of public works dated in February, 1851, "all the lands to the very source of the river."

The next point made by complainant in this case is—

"That the Reservation of Lands made by the Department, under the Grant of 1846, was a Reservation up the East Fork of the Des Moines river."

This absurdity is supported only by the isolated fact that the department of the interior, on the 17th of December, 1853, erroneously approved a list of lands amounting in the aggregate to 11,661.80 acres of land, which were located on the east branch of the Des Moines river. Notwithstanding the fact so abundantly shown in the record, that this certificate was a mistake, in fact, and was so recognized, both by the state and general government, and corrected in the final adjustment of the grant made with Commissioner Harvey, yet the complainant insists that it established a reservation in fact, of lands not only included in the terms of the grant, but lands which the state never claimed were within the terms of the grant, or were certified otherwise than by error.

Is it not absurd to say that the department made a reservation of lands upon a *branch* of the river, whilst disputing about the extent of the grant, with reference to lands in Minnesota,

when it is conceded the branch was known to have its source within the limits of the state.

Before noticing in detail the glaring misconceptions and unsupported assumption of facts upon which counsel attempt to give color to this absurd proposition of a reservation, on a branch of the river, we beg to call attention of the court to the "orders of reservation," and to show conclusively from the record that they all relate to lands on the Des Moines river, and not upon a branch or fork of the river.

And we may here, once for all, dispose of the assumption that at the time these orders of reservation were made, the surveys had not extended to the lands on the main river above the upper forks, and therefore did not apply to these lands, but to lands on the east fork.

The conclusive answer to this proposition is, that the lands on the east fork were not surveyed at the date of these orders of reservation, and the department was as ignorant as to lands on that fork as to lands on the main river.

The lands on the main stream and on the west side of the east fork were surveyed in the same survey, in September, 1853. (See copy of official surveys, book of maps, Nos. 11 and 12.) The lands on the east side of the east fork were under *process* of survey, October 24, 1851. (See Map No. 9.)

And first we call attention to the undisputed fact that, in all the official correspondence and orders of the department made pending this controversy as to the extent of the grant of 1846, no mention is made of the *east fork* of the Des Moines river until May 29, 1856, when it was mentioned by Caleb Cushing in his remarkable opinion of that date.

It would be requiring, perhaps, too much of our opponents to ask them to be consistent in their argument, but it is certainly proper to call attention to their inconsistencies.

It is insisted that the question of reservation must be determined by the orders and rulings of the department made prior to the railroad grant of May 15, 1856, but as soon as he com-

mences trying to run the reservation up the east fork, he commences with Caleb Cushing, May 28, 1856, and *Wilson's letter* of July 14, 1856.

Now if the character and extent of this reservation is to be determined as between these two grants by what was said and done prior to May 15, 1856, as contended for by plaintiff's counsel, it appears to us that these two posthumous productions ought not to be so confidently relied upon by him. For certain it is, no one ever paid any attention to them after their production, as we shall show more conclusively when we consider them in their order.

We proceed to examine the orders of reservation, and the acts and rulings of the department prior to July 15, 1856.

First the grant of 1846, under which the rulings and orders were made, was of an equal moiety of land on each side of said "river," "the Des Moines river," and not a grant of lands on a branch of the river.

On the 23d of February, 1848, Richard M. Young, commissioner, in his communication to the secretary of the board of public works of Iowa, set out on page 90 of the record, says:

> A question has arisen as to the extent of the grant made to Iowa by the act of 8th of August, 1846, and the opinion of this office has been requested on that point.
>
> By the terms of the law, the grant is of an equal moiety in alternate sections of the public lands remaining unsold, and not otherwise disposed of, incumbered or appropriated, in a strip five miles in width on each side of the river, to be selected within said territory, &c., &c., and the proceeds are to be applied in the improvement of the navigation of that river, from its mouth to the Raccoon forks. Hence the state is entitled to the alternate sections within five miles of the Des Moines river, *throughout the whole extent of that river*, within the limits of Iowa.

The court will perceive that no reference is here made to any branch of the Des Moines river.

In the communication of Messrs. Dodge and Jones to Secretary Walker, found on pages 92 and 93 of the record, we have the following statement of the claim made by the state:

We earnestly request that you will give the necessary instruction for the selection and approval of these lands along the entire route of the Des Moines, as contemplated by law, as fast as the surveys are made and returned, and that the lands which belong to the state, which have been inadvertently offered, and which remain unsold, may be withdrawn from the market, and certified to the state also.

The request here is that the secretary of the treasury will give the necessary instructions for the selection and approval of lands along the entire route of the Des Moines river, and not one word is said about the east branch or fork of the Des Moines river. The opinion of Mr. Walker, secretary of the treasury, in response to this communication, dated March 2, 1849, found on page 94 of the record, says:

I concur with you in the views contained in your communication, and am of the opinion that the grant in question extends, as therein stated, *on both sides of the river, from its source to its mouth*, but not to lands on the river in the state of Missouri.

Here again not one word is mentioned about any fork or branch of the river.

The order of Richard M. Young, commissioner of the general land office, to the local land officers, dated June 1, 1849, is as follows:

GENERAL LAND OFFICE, June 1, 1849.

REGISTER AND RECEIVER, *Iowa City, Iowa:* GENTLEMEN—The secretary of the treasury having decided that the grant of the state of Iowa, under the act of the 8th of August, 1846, extended along the Des Moines river to its source, and that it did not stop at the Raccoon forks, as this office had previously decided, you are hereby directed to withhold from sale all the lands situated in the odd-numbered sections, within five miles on each side of that river, showing the sales and locations which have been made within these sections, as it is designed to endeavor to procure some legislative action on the part of congress confirmatory to them.

The diagram enclosed extends to 83 N., 26 W., being as far as the surveys have progressed in that direction.

I am, very respectfully, your obedient servant,

RICHARD M. YOUNG.

(Exhibit 13, p 94.)

Not one word is here said about any fork or branch of the river.

The order of Secretary Ewing, made on the 6th of April, 1860, to the commissioner of the general land office, reserving from sale the lands claimed by the state, as found on page 97 of the record, is as follows:

As congress is now in session, and may take action on the subject, it will be proper, in my opinion, to postpone any immediate steps for bringing into market the lands embraced in the state's selections.

I am, sir, very respectfully, your obedient servant,

T. EWING, *Secretary.*

The commissioner of the general land office.

Now the claim of the state, as notified officially to the department and as claimed by Messrs. Dodge and Jones, was the lands on both sides of the river to its source, and no mention is made of any branch or fork of the river. The claim of the state, as here referred to and officially made, is set out upon page 100, being a reiteration of what had been previously demanded, and is as follows:

KEOKUK, February 22, 1851.

TO HON. ALEX. STUART,—As agent of the state of Iowa, we demand all the odd sections of land within five miles of the Des Moines river above Raccoon forks, for the improvement of said river, as provided by the act of congress upon that subject.

WM. PATTERSON,
President Board of Public Works.

J. WILLIAMS, *Secretary.*

The order of Mr. Stuart continuing this reservation, made on the 26th of July, 1851, found on page 101 of the record, is as follows:

DEPARTMENT OF THE INTERIOR, WASHINGTON, July 26, 1851.

SIR,—Enclosed I send you a copy of an opinion of the attorney general, dated the 30th ultimo, in which I concur, relative to the claim of the state of Iowa, under the act of 8th August, 1846, to alternate sections of land along the Des Moines river above the Raccoon forks, together with all the papers in the case.

The order of Mr. Secretary Ewing of the 6th April, 1850, for the withholding of these lands from market until the close of the then session of congress may be continued to the end of the approaching session, in order

to give the state the opportunity of petitioning for an extension of the grant by law.

I am, sir, very respectfully, your obedient servant,

ALEX. H. H. STUART, *Secretary.*

The commissioner of the general land office.

Here again reference is made to the lands *along the Des Moines river*, and not one word is mentioned about any fork or branch thereof.

The order of Mr. Secretary Stuart, made October 29, 1851, found upon page 101 of the record, is as follows:

I am willing to recognize the claim of the state, and to approve the selections without prejudice to the rights, if any there be, of other parties, thus leaving the question as to the proper construction of the statute entirely open to the action of the judiciary. You will please, therefore, as soon as may be practicable, submit for my approval such lists as may have been prepared, and proceed to report for like approval, lists of the alternate sections claimed by the state of Iowa above the Raccoon forks, as far as the surveys have progressed, or may hereafter be completed and returned.

Very respectfully, &c., &c.,

A. H. H. STUART, *Secretary.*

The commissioner of the general land office.

Here the secretary declares that he is willing to recognize the claim of the state. This claim of the state, as we have already shown, related to lands on either side of the Des Moines river above the Raccoon fork thereof, and this is the claim that the secretary then recognized and directed the commissioner of the general land office to submit for his approval lists of lands as far as the surveys had progressed, or might be thereafter completed and returned. Here was a continuing reservation applicable to specific lands whenever they were surveyed, and whenever the definite location of the lands with reference to the Des Moines river was ascertained. The reservation was not of any particular lands that the secretary might then have thought were within five miles of the Des Moines river, but it was a reservation of all lands that might, by official surveys, be ascertained to be within five miles of the

Des Moines river, and above the Raccoon fork thereof. The order had no reference to any branch of the Des Moines river, nor was there any branch mentioned or in contemplation. To say that he had a branch of the Des Moines river in his mind when he made this order is an absurdity. When this order was made in 1851 the lands on the east branch or fork of the Des Moines river had not been surveyed. It was not ascertained then where the east branch of the Des Moines river was located any more than it was ascertained where the main stream was located.

We come now to certain statements made in the argument for complainant which we say are not sustained by the record. It is asserted, first, that the east branch of the Des Moines river is laid down on all the maps as the only Des Moines river proper, and at the time of the reservation, was the only Des Moines river known to the department and to geographers.

The oldest maps in the record, introduced by plaintiff, are the diagrams of public surveys of 1845, 1849, 1850, 1851, 1852 and 1853.

Assuming, for the sake of the argument, that these skeleton maps of the public surveys constitute the only information the department had, they prove the assumption untrue, because the map of 1845, No. 5, does not give even the boundaries of the territory, nor any branch of the Des Moines above the Raccoon, except at the merest random. The east fork, originating in a lake, is not on it at all.

All these maps that have upon them the day of the month when they were certified at Dubuque by the surveyor general, are dated the latter part of October of the current year. The report shows they were made in that month of each year. The first decision extending the grant to the source of the river was by Mr. Young, in February, 1848. (See page 90 of the record.)

The letter of the secretary of the board of public works of the state of Iowa, claiming the lands to the source of the river, is dated September, 1848. (See record, p. 91.)

The letter of Messrs. Dodge and others, setting forth this claim, and upon which the decision of Secretary Walker was based, is dated January 8, 1849.

The decision of Secretary Walker is dated March 2, 1849, and the orders to the local land officers are dated June 1, 1849.

Now, to assert that these decisions and orders were made with reference to the map of 1849, or of subsequent years, not then in existence, is absurd.

If we are, however, to go outside of the plain letter of these orders and rulings, and ascertain where the department *thought* the Des Moines river was, let us look at *some facts in the record:*

1st. We have the fact that the upper fork of the Des Moines river, which is made by the junction of the east branch with the main stream, was known to geographers and to the executive and legislative departments of the general government as early as 1825.

In the second article of the treaty between the Sacs and Foxes and the Sioux Indians, made August 19, 1825 (U. S. Stat. at L., vol. 7, p. 272), "the upper fork of the Des Moines river" is made one of the termini of the dividing line between the tribes.

In the treaty made between the United States and various tribes of Indians, July 15, 1830, the "upper fork of the Des Moines river was again made the starting point in defining the boundaries of the ceded country. (See record, p. 74.)

An official survey of the line established by the treaty of 1825, was made under authority of the United States as early as the year 1832. (See minutes of this survey, record, pp. 142 to 151.)

This official survey was received by the department January 15, 1836, and has remained of record there ever since.

The upper fork of the Des Moines is surveyed, located, and particularly described in the minutes of this survey. (See record, pp. 142–3).

This survey is extended on the map made by the depart-

ment, and is set out in the record. (See book of maps, No. 13). This map is not printed in the record printed by the clerk and was *omitted* by direction of plaintiff's counsel. (See statement of the clerk, p. 161 of record).

Mr. Cushing, in his opinion dated May 28, 1856, assumes that—

> Mr. Walker and Mr. Stewart had before them a map on which the eastern branch was alone depicted taking its rise in a lake on the boundary line of Minnesota.

It would be curious to find this *imaginary* map. It is not the map of 1845, for no such thing appears on it. No copy of it can be found or has been put in evidence. On the contrary, the diagrams of the public surveys of 1849, 1850, 1851, 1852 and 1853, which are put in evidence by the plaintiff, all show that the stream that had its source in a lake on the boundary line of Minnesota was the east fork of the Des Moines river, and that the main stream had its source far up in the territory of Minnesota. (See these maps or diagrams, Nos. 3, 7, 8 and 9).

The error on these maps is *not* mistaking the east fork for the main stream, but is in merely locating the upper fork of the river or the junction of the east fork of the main stream further *north* than it should have been designated.

And how did this error occur? Was it because the east fork was unknown as such, or was it merely an inadvertence in sketching a part of the map that was foreign to the purpose for which it was made? Clearly it was the latter. For the east fork was known, and it was known that it was not the main stream, for on all these maps the main stream is indicated as having its rise far up in Minnesota.

We here call the attention of the court to the fact, and desire once for all to emphasize it, that these maps of the surveyor general were not made for the purpose of giving the topography of the country or the location of the rivers. Upon their face they show that the only purpose the draughtsman

had in view in making them, and the only purpose for which they were sent to the department was to show the progress of the public surveys. The general outline of the state of Iowa, and the relation of the streams beyond the surveys were merely approximated.

Upon these maps were placed the correction lines and the township lines, and the figures and letters indicating the condition and progress of the public surveys and the *streams surveyed.* The idea of using such maps as these to show either the location of the Indian boundary, or of the streams, or the branches of the streams of the state beyond the perfected surveys probably would never have occurred to any one with less ingenuity and less imagination than the amiable gentleman who has gotten up the evidence for the plaintiff in this case. That the draughtsman who made these maps ever had the idea that an attempt would be made to use them for such a purpose, is scarcely conceivable. His map was made with reference to the purpose and object he had in view, and when he made his map sufficiently accurate to accomplish that purpose and object, he had performed his whole duty with reference to the matter in hand. These are not maps for general information with reference to the topography of the country, or the relation of its streams. They are not public maps published for general purposes. They are merely diagrams made for a specific object, and with reference to that object they may be presumed to be correct. But with reference to other matters that incidentally appear upon the maps, they are of no importance, and it is not to be presumed that the department ever consulted them except with reference to the matter intended to be illustrated by them.

And that these maps were not correct *even within the knowledge* of the government surveyors with reference to this very matter, we have conclusive evidence in the record.

For instance, map No. 9 is certified by Warner Lewis, surveyor general, October 21, 1853. On this very map the town-

ship lines are surveyed as far north as township 95, and as far west as range 32.

By reference to a copy of the official survey of townships 91, 28 and 91, 29, books of maps Nos. 11 and 12, it will be seen that these townships were surveyed, and the township lines completed June 14, 1853, and we presume the east fork of the Des Moines river ascertained and marked on the plat. These maps, 11 and 12, are also omitted by direction of plaintiff's counsel, record, p. 161.

Yet four months afterwards this officer certifies this map to the department at Washington designating this upper fork as twenty miles or more north of its true location.

And why? Merely because the matter was irrelevant to the purpose of his map, which was merely to show the progress and extent of the public surveys.

The next assumption heretofore made in the argument for appellant, not sustained by the record, is, that the president of the Des Moines Navigation and Railroad Company, Mr. Johnson, on the 7th of June, 1856, made an application for a reservation of lands along the *west* branch of the Des Moines river, and that the commissioner refused to make the *new* reservation desired. It is asserted that a *change* of reservation was sought and refused in absolute and positive terms. This is not sustained by the record. The letter of Mr. Johnson is found upon page 76, and the reply of the commissioner on page 77 of the record. The letter of Mr. Johnson recites the act of 1846, and refers to the letters of the secretary of the treasury of March 2, 1849, and of the secretary of the interior of October 29, 1851, and the selection of the alternate sections made by the state on the 20th July, 1850. It refers to the fact that the lands in Minnesota were then being surveyed, and might be taken to be subject to pre-emption, and asks that a notice be given to the proper officers that the odd sections on each side of the river in a strip five miles in width to its source, were reserved under the act of 1846. Not one word is said in

this communication about the east fork of the river, or about any reservation ever having been made upon the east fork, or any lands having been certified on the east fork of the river. It merely asserts the claim made by the state to the lands in alternate sections on each side of *the river* in a strip five miles in width to its source, which was the claim made by the state from the very first.

The answer of the commissioner, Mr. Hendricks, of date March 21, 1856, does not refuse to give the notice as requested upon any ground that the lands in Minnesota were upon a different branch of the stream than that upon which the reservation had been made. Mr. Hendricks never dreamed of a reservation of lands on the east fork of the river. Notwithstanding, this corsespondence occurred two years after the official survey by which the true location of the upper fork of the Des Moines river had been ascertained, yet no mention is made in Mr. Hendricks' communication of any misconception upon the part of the department as to what was the Des Moines river and what was the east fork of the Des Moines river; but he bases his refusal exclusively upon the ground that he has examined the act of congress of August 8, 1846, and had become—

> Satisfied both by the language of the act itself, and by the report of the committee made to the house of representatives during the session at which it was passed, that the grant does not extend above the Raccoon fork.

And he says—

> To that extent the alternate sections have heretofore been certified to the state of Iowa.

And adds—

> I cannot comply with your above mentioned request.

This communication is followed by another communication of Mr. Johnson addressed to Rob't McClelland, secretary of the interior, found upon pages 78 and 79 of the record, in the nature of an appeal from the decision of Mr. Hendricks. In

this communication not one word is said about the east fork of the Des Moines river, or any claim made to change any reservation theretofore made. On the contrary, the claim is based upon the decisions of Secretaries Walker and Stuart, deciding that the grant extended to the source of the Des Moines river.

This communication is followed by another, of date March 24, 1856, from Mr. Hendricks, commissioner, to the secretary of the interior, Rob't McClelland, transmitting to him the former decisions and opinions relating to the grant. Not one word is said here about the east fork of the Des Moines river. No mention whatever is made of it. But Mr. Hendricks does make the following statement in this communication:

> One list I find has been approved in like manner during your administration, without your attention having been particularly called to the point by the gentleman then in charge, through whose direction the list was prepared, in the usual form, was submitted on the 15th December, 1853, and was approved and returned on the 17th of the same month.

This list, certified on the 15th of December, 1853, is here referred as a list having been made without the attention of the secretary being called to the point made by the gentleman then in charge, through whose direction the list was prepared. This is all we have in the entire record showing how the error occurred by which the land upon the east fork of the Des Moines river was certified. It seems that it was procured to be done in behalf of this Des Moines Navigation and Railroad Company, without the attention of the department being particularly called to the same. The record shows that this company soon afterwards abandoned the work of the Des Moines river improvement and settled with the state of Iowa. The present defendants are in no wise responsible for this error in certifying lands on the east fork of the Des Moines river. Indeed, the fact that these lands were on the east fork of the Des Moines river, is not mentioned in this letter of Mr. Hendricks, dated March 24, 1856.

On the 7th of May, 1856, McClelland, secretary of the interior, submitted the case before him to Attorney General Cushing, for his opinion on three points involved in the appeal then pending before him, which points are set out in the opinion of Mr. Cushing, as follows:

1. Whether the decision of Mr. Stuart, and the consequent action of the department down to the present time, are conclusive in favor of the claim of the state of Iowa?

2. Whether, if it be an open question, the grant extends in his opinion, above the Raccoon fork?

3. Whether it is to be considered as reaching into the territory of Minnesota?

(See opinion of Mr. Cushing, record, p. 30.)

Here again no mention is made of the east fork of the Des Moines river, and Mr. Cushing is not asked for any opinion with reference to it.

The question he is asked is as to whether the grant is to be considered as reaching into the territory of Minnesota.

The next documents in point of time prior to the railroad grant of 1856, are found on pages 109 and 121, of record dated May 12, 1856, and a certificate as the report of the committee on public lands in the house, whilst the bill approved May 15, 1856, was pending.

These documents still speak of the point where the railroads cross the Des Moines river.

This is two years after the completed survey of those townships, and no mention is made of a reservation on the east fork of the river.

Mr. Cushing is giving a reason for not extending the grant to the "source of the river," which is confessedly in Minnesota.

He says that in the original construction of the grant, the lands in the state of Missouri were excluded, notwithstanding they were within five miles of the river, and were below the Raccoon fork and clearly within the letter of the grant.

He then adds:

I conceive that the considerations which induced Mr. Walker to diminish, by construction, the scope of selections for twenty-five miles on one side of the river below the Raccoon fork, show that in extending the grant above to the 'source' of the Des Moines, he intended to confirm it within the limits of the state of Iowa.

Such was the understanding of the subject which guided the action of Mr. Stuart; the lists which he approved, expressly referring to the limit of the *north boundary* of the state. And that is the utmost point to which, in my judgment, you can lawfully go in case you acquiesce in, and accept as rule for yourself, the opinion of Mr. Walker and the action of Mr. Stuart.

* * * * * * * * * *

He further says:

Mr. Walker did not say and could not have said that the grant extends into Minnesota. If he had apprehended any such consequences of deciding that the grant extends above the Raccoon fork, he could not have made this decision, but must have referred the state, as Mr. Ewing afterward did, to congress. That is plainly to be inferred from the consideration that the act of congress cannot be executed, if it be so construed as to assume that the grant extends into Minnesota. It contains no provisions, in virtue of which one state is to hold public domain within the limits of another state or inchoate state.

Impressed by the force of this consideration, Mr. Walker excluded from the purview of the grant the land on one side of the river for the length of twenty-five miles, though plainly comprehended by the *letter* of the act.

If Mr. Cushing had confined himself to the above reason why the grant should not be extended into Minnesota, it would have been satisfactory and certainly all-sufficient. Because he gives here a sufficient reason for not doing so. It is *the* reason alone applicable to the construction of the grant that excluded lands in Missouri. There was no need of mistaking a branch of the river for the main stream to account for Mr. Walker excluding the lands in Missouri from the grant. Then, why in the name of common sense imagine such a reason on the part of Mr. Walker and Mr. Stewart for excluding lands in Minnesota?

And yet, from some reason Mr. Cushing is induced to inject such a hypothesis between the above-quoted paragraphs of his opinion.

The sandwiched sentence is as follows:

> They (Mr. Walker and Mr. Stuart) unquestionably had before them the maps of the state, in which the eastern branch of the Des Moines was alone depicted taking its rise in a lake on the boundary line of Minnesota. If they had knowledge of any western branch of greater or less length, they treated the eastern branch as the true Des Moines.
>
> I *think they must have done so* because they could not have done otherwise.

Now, we have already called the attention of the court to the fact that at the time of Mr. Walker's and Mr. Stuart's action no lands had been surveyed even as far north as Fort Dodge. Nothing was known of one branch of the river more than another, and no question had ever been made about the east forks or lands located on it. The error in certifying lands on the east fork occurred years afterward.

Now, let us read Mr. Cushing's opinion without this peculiar clause, and it will be seen to be good and complete sense without it, clearly showing it was an afterthought put into the opinion and wholly foreign to the decision of the question submitted to him by the secretary of the interior. The opinion, without this extraneous matter, would read as follows:

> I conceive that the considerations which induced Mr. Walker to diminish, by construction, the scope of selections for twenty-five miles on one side of the river below the Raccoon fork, show that in extending the grant above to the 'source' of the Des Moines, he intended to confirm it within the limits of the state of Iowa.
>
> Such was the understanding of the subject which guided the action of Mr. Stuart; the lists which he approved expressly referring to the limit of the *north boundary* of the state. And that is the utmost point to which, in my judgment, you can lawfully go in case you acquiesce in, and accept as a rule for yourself the opinion of Mr. Walker and the action of Mr. Stuart.
>
> Mr. Walker did not say, and could not have said, that the grant extends into Minnesota If he had apprehended any such consequences of decid-

ing that the grant extends above the Raccoon fork, he could not have made this decision, but must have referred the state, as Mr. Ewing afterward did, to congress. This is plainly to be inferred from the consideration that the act of congress cannot be executed, if it be so construed as to assume that the grant extends into Minnesota. It contains no provisions in virtue of which one state is to hold public domain within the limits of another state or inchoate state.

Impressed by the force of *this* consideration, Mr. Walker excluded from the purview of the grant the land on one side of the river for the length of twenty-five miles, though plainly comprehended by the *letter* of the act.

But a conclusive answer to Mr. Cushing's supposition is, that *if* the extension of the grant above the Raccoon fork to the source of the river was made under the supposition and upon the belief that the east fork of the river was the main stream, and that it extended only to the north line of the state, then the limitation of this construction of the grant by the express words "but lands only to the north line of the state," were wholly unnecessary.

Now, the true logic is this: Mr. Walker said, in construing the grant, "but not to lands in Missouri," because lands in Missouri were adjacent to the river below the forks, and Mr. Stuart said, "but not to lands beyond the north boundary of the state," because he knew that lands in Minnesota were along the line of the river and within five miles thereof.

So far from these words of limitation being any evidence of a want of knowledge or information, that the main river did not extend into or have its rise in Minnesota, it proves exactly the reverse—that he did know it, and hence placed this limitation upon his direction to certify the lands above the Raccoon fork.

Mr. Cushing refers to this east fork of the river merely as an argument to show why the construction of the grant was limited to the northern boundary of the state. He understands the demand of Mr. Johnson to be for the lands on the main stream, and he recommends to the secretary a certification of the *lands claimed* as far as the north line of the state, on the main stream. He says:

I advise, therefore, that you propose to the state of Iowa, and its assigns, to acquiesce in and accept the decision of Mr. Stuart as final, and to approve selections accordingly, provided the state, or its assigns, will themselves agree to acquiesce in and accept that decision as final. If they refuse to treat that decision as final, they cannot expect you to do so. They should be bound, if you are. If they consent to enter into satisfactory stipulations of contract to that effect, you can with safety award to them the *residue of the claim* up to the northern boundary of the state.

Now what does Mr. Cushing here mean by advising the secretary to award to the state "the residue of her claim, up to the northern boundary of the state?"

If the state was claiming any lands on the "east fork," then it was not claiming any lands in Minnesota. The letter of Mr. Johnson, the basis of the appeal, clearly relates to lands on the main stream, for otherwise there were no lands in Minnesota.

But Mr. Cushing, in advising this compromise, proposes in express terms to certify lands along the main stream, and not on the east fork. He says, in concluding his opinion:

In fine, after the most mature reflection, it seems to me that only two tenable alternatives present themselves in the case; one, to stand on the action of Mr. Walker and Mr. Stuart, not as legal doctrine, but as decision; and the other, rejecting all the intermediate vacillations of opinion, to go back to the original action, and stand on that as decision, not as legal doctrine. Either of these conclusions would be perfectly advisable, according to the rules of law, for if it be unlawful to go behind executive decisions, then the last decision in the case was a violation of law and should be rejected because of its illegality. I have hesitated much on the question whether that be not the true view of the subject; but, for reasons already suggested, have come to the conclusion, on the whole, to advise you to stand on the last decision, which gives to the state the lands *along the course of the Des Moines*, up to the northern boundary of the state.

By lands *along the course of the Des Moines* up the northern boundary, he clearly does not mean up the east fork, but uses this term in contradistinction to lands on the east fork of the river.

Again, why release anything if the concession was only to

be for lands on the east fork? There were no lands in Minnesota within five miles of the east fork—that east fork terminated or had its origin in a lake wholly within the state of Iowa.

In the letter of Secretary McClelland, directing what to do upon this appeal, the secretary says, June 9, 1856 (see record, p. 36):

> In the subsequent action upon selections not yet approved, I have concluded to be governed by the advice of the attorney general as contained in the paragraph near the close of such opinion, beginning with the words, "I advise, therefore, that you propose to the state of Iowa and its assigns," and ending with, "you can with safety award to them the residue of the claim up to the northern boundary of the state."

Here all that the attorney general had gratuitously said about the east fork of the Des Moines river is ignored, and the adoption of the opinion confided to that part of it commencing with the words, "you can with safety award to them the residue of this claim up to the northern boundary of the state."

Now this, so far from being a rejection of the claim of the lands on the main stream, is an express proposition to recognize it up to the north boundary of the state, along the course of the river, upon the condition that the state would relinquish the land in Minnesota.

Mr. Wilson, on the 14th of July, 1856, perverts the meaning of these instructions, and in his letter to the secretary (record, page 37), refers to "land to the north line of the state, along the east fork."

No notice of this peculiar letter of Mr. Wilson's is taken by anybody in any subsequent negotiations in regard to this grant.

No release was ever made by the state, and no reference was ever again made to the lands on the east fork, except in the Harvey settlement, where they are charged up to the state as lands erroneously certified.

In 1858 the state made a settlement with the Des Moines Navigation Company, and diverted the remainder of the grant to the building of a railroad up and along the Des Moines

valley, and appointed Charles Mason agent of the state to procure the lands.

See these acts, record, p. 115, Ex. 52.

April 30, 1858, Mr. Mason, as agent of the state of Iowa, addressed a letter to Mr. Thompson, secretary of the interior, referring to a conversation between them upon the "extent of the Des Moines river grant." (Exhibit 53, p. 115.)

In this letter no intimation is given that either party thought of the east fork of the river.

Mr. Mason proposes to accept of the lands to the north boundary of the state, but to leave the question open as to lands in Minnesota.

Now this proposition would have been absurd if the lands within the state were to be on the east fork.

Mr. Mason did not contemplate a certificate of lands to the northern boundary of the state on the east fork, and then an extension of the grant on the main stream.

He understood the proposition of Mr. Cushing's opinion to be a certificate of lands to the north boundary of the state *along the course of the stream*, as the opinion puts it in plain language. And this he proposed to accept, provided no relinquishment of the lands in Minnesota should be required.

On the 8th of May, Mr. Thompson put an end to the controversy about the extent of the grant (there never was any about its location) by his very peremptory letter of that date.

We next have the following notice of the continuation of the reservation (record, p. 118, Exhibit 57):

No. 661.—Notice respecting certain lands in the state of Iowa.

Notice is hereby given that the lands along the Des Moines river, in Iowa, within the claimed limits of the Des Moines grant in that state, above the mouth of the Raccoon forks of said river, which has been reserved from sale heretofore, on account of the claim of the state thereto, will continue reserved, for the time being, from sale or from location, by any species of scrip or warrants, notwithstanding the recent decision of the Supreme Court against the claim.

This action is deemed necessary to afford time for congress to consider, upon memorial or otherwise, the case of actual *bona fide* settlers, holding under titles from the state, and to make such provision, by confirmation or adjustment of the claims of such settlers, as may appear to be right and proper.

JOS. S. WILSON,
Commissioner of the General Land Office.

General Land Office, May 18, 1860.

Not a word here from Wilson about the east fork, but it is a *continuation* of lands *along the Des Moines river, in Iowa*, within the *claimed* limits of the Des Moines grant above the Raccoon forks, notwithstanding the recent decision in the Litchfield case.

These notices remained posted in the local land offices of the United States until 1863.

(See record, p. 118.)

Following this, we have the action of congress in the joint resolution of March 3, 1861, and the act of July 12, 1862.

This act extends the grant of 1846 to the north line of the state, in the very language of the orders of reservation on each side of the Des Moines river.

Why not on the east fork of the Des Moines?

Was there any change? If so, when did the change occur?

No change was made and none ever sought, for the sufficient reason that the Des Moines river never changed and that the alternate sections within five miles of the Des Moines river, above the Raccoon fork, were the same through all these years, from 1848 to 1862.

The act of July 12, 1862, was intended to recognize the "claim of the state" to the lands along the Des Moines river to its northern boundary, because as such they had been reserved.

This is a recognition by both the legislative and executive departments of the general government—of the reservation and of the right of the state to these lands.

We think we have sufficiently noticed the assumptions here-

tofore made by counsel in regard to a reservation on the east fork of the Des Moines river.

1st. He has asserted that the east branch is laid down on all the maps as the Des Moines river proper, and was the only Des Moines river then known to the department and to geographers.

This we have shown is not correct.

2d. He has asserted that the decisions of the department in regard to the reservation prior to 1856 were all made while the east fork was known and treated as the Des Moines river. This we also have shown is incorrect.

3d. He has asserted that on the 7th of June, 1856, the president of the Des Moines Navigation Co. made an application for a reservation of lands on the *west fork* of the Des Moines river, and that the commissioner refused to make the new reservation as desired. We have shown that no reservation was ever asked for on the *west fork* of the Des Moines river, and no new reservation was ever talked of—that the request was for an extension of the same reservation up the same steam, and that the reservation was recognized to the north line of the state on the main stream, "the Des Moines river," and that it was the east fork that was ignored.

4th. He has asserted in argument that a change of reservation was sought and refused in positive terms. This we have shown is incorrect.

5th. He has asserted that upon an appeal from the commissioner that a decision was made that the reservation was up the east branch, and that there was a refusal to recognize it anywhere else. This we have also shown is a misapprehension of the record.

In the Harvey settlement, the idea of any reservation of lands upon the east fork of the Des Moines river is not thought

of, and the certification of this 11,661.80 acres is expressly recognized as an error, and the lands are designated as not within five miles of the Des Moines river. The following portion of the report shows that the whole amount of the lands above the Raccoon fork, to the northern boundary of the state was 558,004.06 acres. This is taken as the basis for the settlement of the quantity of lands to which the state is entitled under the act of 1862, and the lands in place certified and confirmed by the joint resolution of the 2d of March, 1861, are first charged up to the state and deducted from this aggregate. To these are added the fourth item of 11,661.80 acres. This item is charged against the state as lands selected and heretofore certified on the east fork of the Des Moines river, more than five miles from the western or main branch.

It will be seen that the amount of lands to which the grantees of the state for railroad purposes were entitled, under the act of 1862, is thus diminished 11,661.80 acres, by virtue of this error, and that no indemnity, in that settlement, was granted therefor. That these lands were wrongfully procured or secured to the Des Moines Navigation Company, is the misfortune and not the fault of the Des Moines Valley Railroad Company. This company lost 11,661.80 acres of land that were deducted out of the whole number of acres to which it would otherwise have been entitled. And now plaintiffs in this case seek to take from them about 10,000 acres more that are located within five miles of the Des Moines river and that legitimately belong to their grant. The portion of Mr. Harvey's report to which we particularly refer, is as follows:

It will be observed that the state in this settlement is credited with the whole amount of land in odd-numbered sections and lying within five miles of the Des Doines, from the Raccoon fork to the northern boundary of the state, determined to be 558,004.06 acres.

The state is then charged with the several quantities of land following, to-wit:

1st. Indemnity land selected under special certificate, dated April 25, 1863..... 297,603.74 acres.

2d.	Remaining lands in place yet to be certified.....	167,109.02 acres.
3d.	Lands in place confirmed by the joint resolution of March 2, 1861.....	44,838.64 acres.
4th.	Lands selected and heretofore certified on the east fork of the Des Moines river and more than five miles from the western or main branch.....	11,661.80 acres.
5th.	The excess selected and approved to the state as a part of the 500,000 acre grant under act of Sept. 5, 1841.....	35,473.54 acres.

Making in all 556,686.74 acres, and leaving due to the state to balance the whole amount of the grant, 1,317.32 acres.

For this balance a special certificate will be issued.

The 11,661.80 acres on the east branch of the Des Moines river, heretofore approved to the state as a part of the Des Moines river grant, and disposed of by the state as such, are held by the department, under the decision of the attorney general to be a legitimate and proper offset to so much of this grant; hence they are charged to the state in this settlement.

But it is claimed that these lands on the east fork of the Des Moines river, had they not been wrongfully certified to the state and secured by the Des Moines Navigation Company would have gone to complainants under their railroad grant, and that as they have lost said lands by the act of the navigation company in procuring them to be wrongfully certified to the state, that, therefore, they should be permitted to make reprisal out of the lands belonging to the Des Moines Valley Railroad Company. This is very poor logic and still poorer morality. One wrong could scarcely justify another, and two wrongs will not make one right. But even upon the ground of sympathy for complainants' misfortunes, they make a poor showing to be indemnified for the loss of this 11,661.80 acres of land by making a reprisal from the limits of our grant. There is no question about it that the lands on the east fork of the Des Moines river were never within the supposed or claimed terms of the Des Moines river grant, and that the certification thereof to the state was void. In the Harvey settlement they are not recognized either by the

state or by the general government as lands that were confirmed to the state under the joint resolution of 1861. The only title, or right, under which the grantees of the Des Moines Navigation Company can hold said lands as against the plaintiff, arises from plaintiff's own default and neglect. On the 7th of April, 1862, the general assembly of the state of Iowa passed a law declaring that the Dubuque & Sioux City Railroad Company should be required to release to the state and its grantees the Des Moines river lands sold by the state as a condition of relieving said company from the forfeiture of their grant by reason of their neglect to comply with the terms and conditions of the act of the general assembly, approved July 14, 1856, requiring said company to complete and equip seventy-five miles of road within three years from the 1st day of December, 1856, and thirty miles in addition each year thereafter for five years, and the whole line of their road by the 1st of December, 1865. (See Sec. 8, act July 14, 1856, p. 12, record.)

On the 7th April, 1862, the general assembly of the state passed the act found on pages 15 and 16 of the record. Section 4 of that act provided that in consideration of the relinquishment by the road, required by the act, the time of completion of any part of the road not then completed should be extended one year from the time of the taking effect of the act. The release required, as a condition precedent to any more certificates by the state, was for all the swamp and overflowed lands approved by the surveyor general, all interest in those tracts of land in Webster and Hamilton counties sold by John Tolman, school fund commissioner, and all lands sold by the state prior to the 7th of May, 1854, of the odd sections above the Raccoon fork of the Des Moines river within five miles of said river, *and such other lands sold after that date as were improved and occupied by actual settlers.* Now, the lands upon the east fork of the Des Moines river were sold and conveyed by the state to the Des Moines Navigation Company in

the settlement of 1858, and we presume the greater portion of them were occupied and settled by persons purchasing in good faith when the act of April 7, 1862, and the act of the general assembly approved June 2, 1864, were enacted.

And this brings us to the consideration more particularly of plaintiffs' title and to the discussion of the proposition that—

PLAINTIFF MUST RECOVER UPON THE STRENGTH OF ITS OWN TITLE.

We presume it will be conceded that the plaintiffs have no legal title to the lands in controversy. If the certificate of the department to the state under the act of 1856 were of any validity, it could only convey the legal title to the state in trust under the act of May 15, 1856. The Dubuque & Pacific Railroad Company is a private corporation under the laws of the state, and as such has no more right to any of the lands certified to the state than any other corporation, except by virtue of some conveyance by the state to them, or some law of the state equivalent to a conveyance. (See *State ex rel. vs. Kirkwood*, 14 Iowa, 166.) The law of the state has provided means by which the state divests itself of the title to these lands and confers it upon these corporations, and this is done by a certificate signed by the governor and register of the land office, in pursuance of Sec. 93, Code of Iowa, or a certificate under Sec. 4 of act of 1856.

Section 93 of the Code of Iowa, provides as follows:

> In cases where lands have been granted to the state of Iowa by act of congress, and certified lists of lands inuring under the grant have been made to the state by the commissioner of the general land office, as required by act of congress, and such lands have been granted by act of the general assembly to any person or company, and such person or company shall have complied with and fulfilled the conditions of the grant, the register of the state land office is hereby authorized to prepare, on the application of the grantee, a list or lists of lands situated in each county inuring to such grantee, from the lists certified by the commissioner of the general land office, as aforesaid, which shall be signed by the governor of the state, and attested by the secretary of state with the state seal, and

then to be certified to by the register to be true and correct copies of the lists made to this state, and deliver them to such grantee, who is hereby authorized to have them recorded in the proper county; and when so recorded they shall be notice to all persons the same as deeds now are, and shall be evidence of title in such grantee or his or its assigns to the lands therein described under the grant of congress by which the lands were certified to the state, so far as the certified lists made by the commissioner aforesaid conferred title to the state.

It is conceded that no such certificate has ever been executed in behalf of complainant or to any one under whom plaintiff claims title. Plaintiff then, must show an equitable right to the lands in controversy, by virtue of the act of congress and the acts of the general assembly of the state of Iowa. This equitable claim is based upon the act of the general assembly approved July 14, 1856. We have already called attention to the fact that upon failure to perform certain acts defined in section 8 of this act, it is declared that it shall be competent for the state of Iowa to resume all rights conferred by the act and to resume all rights to the lands thereby granted and remaining undisposed of by the company. We have already called the attention of the court to the act of the general assembly approved April 7, 1862 (pp. 15 and 16 of record), declaring that the Dubuque & Sioux City Railway Company had failed to comply with the terms and conditions of this grant. This act is followed by the joint resolution approved March 3, 1866, in which it is declared that the railroad companies to which lands were granted under the act of May 15, 1856, have failed to complete their several lines as required, and our senators in congress are instructed, and our representatives requested, to use their endeavors to prevent the passage of any act that should withdraw from the control of the state the lands so granted to the state in aid of the construction of railroads.

This joint resolution is as follows:

WHEREAS, By an act of congress approved on the 15th day of May, 1856, a portion of the public domain was granted to the state of Iowa to aid in the construction of certain lines of railroad, within the time therein limited, with a condition of forfeiture annexed; and,

WHEREAS, The railroad companies to which such lands were transferred have failed to complete their several lines as required, and a renewal of such grant is desirable upon such terms as will compel the speedy completion of the roads and secure the objects of the grant, or work a forfeiture to, and place the lands under the control of the state, upon any failure by such companies to comply with such terms; therefore,

Be it resolved by the general assembly of the state of Iowa, That our senators in congress be instructed, and our representatives requested, to use their best endeavors to prevent the passage of any act which shall withdraw from the control of the legislature of this state the lands granted to the state to aid in the construction of railroads, or that shall in any manner release the railroad companies from their responsibility to the state.

2. That they endeavor to secure an extension of the time for the completion of the several lines of railroads under such restrictions as will secure to the state the immediate control and right of disposition of the remaining lands, in the event of a failure on the part of either of the companies receiving the benefit of such grant to complete any section of its road within such time as may be prescribed by the legislature thereof.

3. That the secretary of state be instructed to transmit to each of our senators and representatives in congress a copy of these resolutions, duly certified.

Approved March 3, 1866.

We next have the act of the general assembly of the state of Iowa, approved March 10, 1868, in which it is declared that the Dubuque & Pacific, now the Dubuque & Sioux City Railroad, has failed to execute the release theretofore required, and has failed to complete and equip the number of miles of road required, and providing that all right, title and interest in and to the land heretofore granted, or intended to be granted, to the said railroad company by the act approved July 14, 1856, and the acts amendatory and supplemental to the same, be, and the same are hereby absolutely and entirely resumed by the state; provided, however, that nothing in this act contained should be construed to affect or in any manner impair the title of the company to the 120 sections of lands for each and every twenty miles of their road then completed and equipped. This act is as follows:

WHEREAS, By an act of congress, approved May 15, 1856, there was granted to the state of Iowa certain land to aid in the construction of certain railroads in said state, upon certain terms, conditions and restrictions under which said lands might be disposed of; and,

WHEREAS, The general assembly of the state of Iowa, by an act approved July 14, 1856, accepted said grant of lands upon the terms, conditions and restrictions contained in said act of congress, and transferred and granted to the Dubuque & Pacific (now Dubuque & Sioux City) Railroad Company that portion of said lands granted by said act of congress to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri river, at or near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, in consideration on the part of said company that it would complete and equip within the time therein specified; and,

WHEREAS, Said company having failed to complete and equip said road, as required in said act, obtained by an act of the general assembly of Iowa, approved April 7, 1862, an extension of time for the completion of said road in further consideration of the release of certain lands in said last mentioned act described; and,

WHEREAS, The said Dubuque & Pacific (now Dubuque & Sioux City) Railroad Company, has failed and refused to execute the said releases; and has failed to complete and equip the number of miles of their said road as by said acts of transfer and extension they were required to have completed and equipped at this time; thereby, at the option of the state, annulling all their right and title to the lands so transferred to said company by said act of July 14, 1856, excepting only one hundred and twenty sections of said land for each twenty miles of said road, now completed and equipped, whereby the state has the right to resume all the right, title and interest in and to the remainder and residue of the land originally granted to said company; and,

WHEREAS, The good faith of the state, in carrying into execution the trust conferred upon her by said act of congress, requires that the remaining land and all title to the same should be resumed to the end that the road, to aid which the same was granted, may be speedily completed; now, therefore,

SECTION 1. *Be it enacted by the general assembly of the state of Iowa*, that all the right, title or interest in and to the land heretofore granted, or intended to be granted, to the Dubuque & Pacific (now Dubuque & Sioux City) Railroad Company, by an act approved July 14, 1856, entitled: "an act to accept the grant and carry into execution the trust conferred upon the state of Iowa by an act of congress, entitled 'an act making a grant of land to the state of Iowa, in alternate sections, to aid in the construction of certain railroads in said state, approved May 15, 1856,'" and

acts amendatory and supplementive of the same be, and the same are hereby absolutely and entirely resumed by the state; provided, however, that nothing in this act contained shall be construed to affect or in any manner impair the title of said company to the one hundred and twenty sections of said land for each and every twenty miles of their road which is now completed and approved.

SEC. 2. The fifth section of said act, approved July 14, 1856, and all other acts and part of acts inconsistent with this act, are hereby repealed.

SEC. 3. This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the *Iowa State Register*, published at Des Moines, and the *Northwest*, published at Fort Dodge, Iowa.

Approved March 10, 1868.

By turning to page 75 of the record, it will be seen that plaintiffs have introduced three certificates, signed by the governor of the state of Iowa, the last of which is dated July 29, 1865. (There is an error in printing the abstract which dates the certificate in 1855. The error is apparent on the face of the printed page, for the reason that Governor Stone, who signed the certificate, was governor in 1865, and not in 1855, and the certificate refers to the act of June 2, 1864.)

By this certificate it appears that the Dubuque & Sioux City railroad on the 2d of June, 1864, was only completed to the east bank of the Cedar river, and the twenty miles of road next westerly thereof, being the sixth consecutive twenty miles westward from Dubuque, was not completed until the 1st of July, 1864.

By stipulation it is agreed that *if* the land at the rate of six sections per mile of road built were taken *clean* from east to west, that the lands in controversy belonging to the grant would have been earned by completing this section of the road, and the question is here squarely presented, whether under the act of congress of May 15, 1856, these railroads have any right to take lands not adjacent to the sections of the road completed.

By the act of March 10, 1868, this railroad company had forfeited to the state all right, title or claim to any lands

granted by the act of July 14, 1856, or the acts amendatory and supplemental to the same, except the 120 sections for each and every twenty miles of road that was then completed and equipped, to which they would have been entitled under the act of May 15, 1856.

No showing is made in the record of the completion of any road west of the point shown by the certificate of July 29, 1865.

In the case of *Courtright against The Cedar Rapids Railroad*, 35 Iowa, 386, the court decided that as to the *first* 120 sections of land granted for the construction of railroads in Iowa, under the act of May 15, 1856, they might be selected anywhere on the line of road, without reference to the locality of the completed part of the road, for the all-sufficient reason that the state was authorized to dispose of them before any road at all was completed. The court, on page 392 of its opinion, uses the following language:

> Now, while as we have stated, the object of the grant was to aid in the construction of the railroad, the appropriation of the first one hundred and twenty sections to that purpose, or the completion of any part of the road, is not made a condition to the grant of that quantity or a condition precedent to the exercise of the powers of sale thereof by the state. Congress relied upon the good faith of the state in order to secure the building of the first twenty miles of railroad, granting the power to sell the land as soon as the title vested in the state, for the purpose, it may be, of enabling the state to apply the proceeds at once to the work. But whatever may have been the intention of congress, certain it is the law imposes no restriction upon the sale of the first one hundred and twenty sections. The *condition applies* to the lands remaining after that quantity has been sold.

The third section of the act of congress provides—

> That the said land hereby granted shall be subject to the disposal of the legislature thereof, for the purpose aforesaid, and no other.

The first section of the act provides—

> That the lands hereby granted for and on account of said roads, severally, shall be exclusively applied in the construction of that road for and

on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever.

Section 4 says:

That the lands hereby granted shall be disposed of only in the following manner: That is to say, that a quantity of land, not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles on each side of said roads, may be sold; and when the governor of said state shall certify to the secretary of the interior that any twenty continuous miles of said road is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed, as aforesaid, and *included within the continuous length of twenty miles of said road*, may be sold; and so from time to time until said roads are completed. And if any of said roads are not completed within ten years, no further sales shall be made, and the lands unsold shall revert to the United States.

Now, applying this statute to the case before us, it is a self-evident proposition that the land in controversy in this case is not included within any continuous length of the twenty miles of the Dubuque & Sioux City Railroad completed at the date of the last certificate offered in evidence by plaintiff, and the last ever issued to the company.

In the case of *S. S. & St. P. R. R. Co. vs. The County of Osceola*, 43 Iowa, 323, it is held by the court, following numerous former decisions referred to—

That as the performance of the conditions annexed to the grants by the state was left to the determination of the governor of the state, the railroad companies could acquire no property in the land granted until the governor had issued a certificate, as required by the statute, showing that the corporations had earned the lands by the completion of the road, or parts thereof, as prescribed by the conditions of the grant.

In this case there is no pretense of evidence that the law has been complied with other than as shown in the three certificates in the record.

Section 4 of the act of 1856 requires the governor to pass upon the facts and issue a certificate when the law has been complied with.

In the case of *The Cedar Rapids & Mo. R. R. Co. vs. The County of Sac*, the act of 1856 was under consideration. It is recited in the opinion of the court in that case that—

> It was claimed by the appellee that the company had completed, in a first-class manner, at least sixty miles of the road as early as 1864, and by reason thereof had become entitled to 230,400 acres, and that to obtain that amount *if lands were taken clean from* the east end of the grant, a portion of the lands in Sac county would be required. The appellees consider it, therefore, demonstrated that a part of the lands in Sac county became subject to taxation, etc. * * * * And, the court continues, "We think that in respect to the first sixty miles it may be said the lands in Sac county were not selected for the building of that portion of the road. To show that they were selected, the appellees refer to the testimony of one Walker, who testifies as follows: 'We claimed title immediately after getting the governor's certificate, in October, 1864, to the lands for sixty miles of road. We selected 230,000 acres for this sixty miles, taking them clean from the Mississippi westward.' But we are af opinion that the company could not acquire the lands thus selected, except so much as was coterminus with the said sixty miles, and that the selection thus made must be treated as a nullity except for the said sixty miles."

46 Iowa, 245.

Referring to the division of the court in the case *vs. Carroll County*, 41 Iowa, 153, the court concludes this part of the opinion by adding—

> But there is no doubt that for the building of a section of twenty miles, the lands situate must be embraced within a continuous twenty miles somewhere. Now if the company commenced at the Mississippi, and its power of selection was exhausted at sixty miles, it is evident that it did not reach Sac county.

Supra, 246.

The foregoing is precisely the case at bar. The company have evidence only of the completion of their road, according to the requirements of their grant, as far west as the east bank of the Cedar river, as shown in their last certificate.

It is agreed that if the lands were "taken clean"—that is, all the vacant lands reaching beyond and not coterminus with

the completed sections of the road, the selections would reach the Des Moines river. But, in the language of the foregoing decision, the selections thus made, except so much as were *co-terminus* with the completed road, must be treated as a nullity.

We next call the attention of the court to another fatal defect in plaintiff's title, as shown by a recent decision of the supreme court of the United States, and as contained in the following proposition, to-wit: That the lands in controversy were not within the six-mile limits of plaintiff's road, and there is no showing in the record that they were entitled to them under any indemnity clause of the act of 1856; that the act of congress of 1856 gave no indemnity lands except for lands disposed of subsequent to the passage of the act and prior to the location of the road. We call the attention of the court to the record (page 58) and to map No. 2, introduced in evidence by plaintiff, upon which is indicated in black lines, between letters A and B, the six-mile limits of the Dubuque & Sioux City Railroad, and showing that all the lands in controversy are north of said limits and what is claimed to be the fifteen-mile limits of said road. Now, if the railroad company had no right to select any lands beyond the six-mile limits of their road and within the fifteen-mile limits here defined, clearly they have no title to the lands in controversy, and their right to select these lands as indemnity lands depends upon the question as to whether the United States had sold or disposed of any of the lands along the line of their road subsequent to the approval of the act and prior to its location. The clause in the act of congress granting this indemnity is as follows:

> But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said state to select, subject to the approval of the secretary of the interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have

attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections by odd numbers as aforesaid and appropriated as aforesaid), shall be held by the state of Iowa for the use and purpose aforesaid; *provided*, That the land to be so located shall in no case be further than fifteen miles from the lines of said roads, and selected for and on account of each of said roads.

We call particular attention of the court to the language of this act. The language is clear and specific that indemnity is only to be given in case the United States have sold any sections, or parts thereof, *granted as aforesaid*, or the right of pre-emption has attached to the same. There is no indemnity given here for lands which the United States had sold and disposed of prior to the act of May 15, 1856, and why? Because said lands are not granted by that act. Indeed it is provided that all such lands are expressly reserved from the operation of said act, except so far as they may be found necessary to locate the road.

And here we beg leave to call the attention of the court to the rule of construction that is to be applied to this act of congress as established by the Supreme Court of the United States.

In the *Litchfield* case, reported in 23 Howard, 66, the Supreme Court says:

> All grants of this description are strictly construed against the grantees; nothing passes but what is conveyed in clear and explicit language; and as the rights here claimed are derived entirely from the act of congress, the donation stands upon the same footing of a grant by the public to a private company, the terms of which must be plainly expressed in the statute; and if not thus expressed, they cannot be implied.

So the case of *Leavenworth, &c., C. R. R. Co. vs. U. S.*, 2 Otto. 740, quotes the above from the *Litchfield* case, and adds:

> If any rights claimed under the government be set up against it, they must be so clearly defined that there can be no question of the purpose of congress to confer them. In other words, what is not given expressly, or by necessary implication, is withheld.

And we now call the attention of the court to this latter case as deciding the very question we here make. In construing the act of 1863, under which the railroad company claimed in that case, the court uses the following language:

The scope and effect of the act of 1863 cannot, in our opinion, be mistaken. The different parts harmonize with each other, and present in a clear light the scheme as an entirety. Kansas needed railroads to develop her resources, and congress was willing to aid her to build them, by a grant of a part of the national domain, *in a condition at the time to be disposed of*. It was accordingly made of alternate sections of land within ten miles on each side of the contemplated roads. Formerly, lands which would probably be affected by a grant were, as soon as it was made, if not in advance of it, withdrawn from market. But experience proves that this practice retarded the settlement of the country, and at the date of this act the rule was not to withdraw them until the road should be actually located. In this way the ordinary working of the land system was not disturbed. Private entries, pre-emption, and homestead settlements, and reservations for special uses, continued within the supposed limits of the grant, the same as if it had not been made. But they ceased when the routes of the roads were definitely fixed; and *if it then appeared that a part of the lands within those limits had been either sold at private entry, taken up by pre-emptors, or reserved by the United States, an equivalent was provided*. The companies were allowed to select under the direction of the secretary of the interior in lieu of the lands disposed of in either of these ways, an equal number of odd sections nearest to those granted, and within twenty miles of the line of road. Having thus given lands in place, and by way of indemnity, congress expressly declared what the act already implied, that lands otherwise appropriated, when it was passed, were *not subject to it*.

The indemnity clause has been insisted upon. We have before said that the grant itself was *in præsenti*, and covered all the odd sections which should appear, on the locations of the road, to have been within the grant when it was made. The right to them did not, however, depend on such location, but attached at once on the making of the grant. It is true, they could not be identified until the line of the road was marked out on the ground; but as soon as this was done it was easy to find them. If the company did not obtain all of them within the original limit, by reason of the power of sale or reservation retained by the United States, it was to be compensated by an equal amount of substituted lands. They could not on any contingency, be selected within the limit, and the attempt to give this effect to the clause receives no support, either in the scheme of the act or in anything that has been urged by counsel. It

would be strange, indeed, if the clause had been intended to perform the office of making a new grant within the ten-mile limit or enlarging the one already made. Instead of this, the words employed show clearly that its only purpose is to give sections beyond that limit, for those lost within it by the action of the government *between the date of the grant and the location of the road.*

As this is a decision by this court, in regard to the construction of an act of congress similar to the one now before it, there can be no question that the decision will be followed. The court construes the indemnity clause as only giving to the railroad company such lands as have been disposed of by the United States between the date of the act and the definite location of the road. They put this construction of the act upon the express ground that lands otherwise appropriated when the act passed were not subject to grant.

We now call the attention of the court to the record in this case, page 52, by which it appears, that on the 10th of May, 1856, all the public lands in Iowa were suspended from sale or pre-emption, from that date until the 15th of February of the next year.

By reference to map No. 4, of book of maps, showing the date of location of plaintiffs' road, it will be seen that the section of the road that crosses the Des Moines river was located July 7, 1856, and that all of the road east of the same, was located prior thereto, and the road west was located in August, 1856. Hence there could have been no sale of any public lands along the line of this road, between the date of the act of May 15, 1856, and the restoration of the public lands to market, in February, 1857.

Under this showing, plaintiffs were entitled to no indemnity lands whatever, for lands sold between the 15th of May, 1856, and the location of their road. At any rate the record shows no disposition of any such lands, and the selection of the lands now in controversy outside of the six-mile limits of their road, is null and void, and wholly unauthorized by the act of 1856,

unless this court shall reverse its opinion in the case cited in 2 Otto, *supra*.

In the act of 1863, before the Supreme Court of the United States, in the Leavenworth case, *supra*, there was a proviso for indemnity lands within ten miles of the line of their road—the United States government had given the road the right to select indemnity lands within the limit of ten miles—and the court says:

> That instead of this proviso enlarging their grant and covering lands not included within their grant, the words employed show clearly that its only purpose is to give sections beyond that limit for those lost within it by the action of the government between the '*date of the grant and the location of the road.*' And this construction gives effect to the statute, and makes each part consistent with the other. And even if the clause were susceptible of a more extended meaning, it is still subject to a limit by the proviso, which includes all lands reserved at the date of the grant, and not simply those found to be reserved when the line of the road shall be definitely fixed.

Now, applying this language to the construction of the act of congress of May 15, 1856, we find that no indemnity is given, except in case it appears that the United States have sold sections or parts of sections *granted as aforesaid*. And this grant, as aforesaid, expressly excludes any and all lands reserved, or to which rights of pre-emption have attached, and the time at which it is to be ascertained whether the United States have sold any lands, or any rights of pré-emption have attached, is fixed at the time *when the lines or routes of the road are definitely fixed and located*.

It may be a hardship upon the plaintiffs in this case to have such a rule of construction apply with reference to their grant, but they have taken up the sword and they should not complain if they perish by the sword. They have invoked a strict construction of these grants by congress and by the state for works of internal improvement. In securing the decision in the Litchfield case, they have been the authors of more mischief and more litigation in regard to the land titles of the

state than all of the lands of their grant are worth, and if these things come home to them they must abide by the folly of their own greediness.

The last point made by the plaintiff, in his argument, is

A CLAIM THAT THE LANDS IN CONTROVERSY WERE EMBRACED IN AN INDIAN RESERVATION PRIOR TO 1852.

Perhaps the shortest way to dispose of this question would be to proceed at once to show that the lands in controversy are not within the supposed Indian reservation, except, probably, those in one or two sections that lie west of the Des Moines river and north and east of the line of the treaty cession of 1830.

But as this would still leave a few hundred acres of the land in controversy to be claimed by plaintiff, we present our first proposition under this head:

That the Indian title or reservation, if established, is wholly immaterial in this controversy.

The authorities cited by appellant simply establish this legal proposition—that a grant by congress of public lands will not entitle the grantee to lands within military or Indian reservations where such reservations existed at the date of the grant. The entire argument of appellant is based on the theory that if the act of 1846 did not convey or grant the lands in controversy, that, therefore, there could be no reservation of them, within the meaning of the proviso in the act of congress of May, 1856, to-wit: excepting therefrom "any and all lands reserved to the United States by any act of congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever." Now we concede in this case that the act of congress of August 8, 1846, did not convey to the state of Iowa the lands in controversy.

In the case of *Litchfield vs. The Dubuque & Pacific R. R. Co.*, 23 Howard, p. 66, this court expressly decided that the act of

1846 conveyed to the state no lands north of the Raccoon fork of the Des Moines river. But afterwards, when the question was made in the case of *Wolcott vs. The Des Moines Navigation & R. R. Co.*, as to whether or not these lands had not been reserved by the department, within the meaning of the proviso in the act of 1856, this court expressly decided that, notwithstanding the grant of 1846 did not extend above the Raccoon fork of the Des Moines river, yet, nevertheless, *the reservation extended to the lands supposed to belong to the grant.*

Now the new question that is made in this case simply goes to the point that, if the act of 1846 had extended to the northern boundary of the state, it would not have carried with it the lands to which the Indian title at that time had not been extinguished. The argument is that the department must not be presumed to have made a reservation unauthorized by law. The answer to this is, that the reservation is a question of fact, the extent of which is to be determined by the language of the orders of the department and its official rulings and decisions with reference thereto, and in determining this question we are not to lose sight of the fact that the question as to what actually passed by the grant of 1846 becomes *wholly immaterial.* But the question, and the only practicable question in this case, is whether in 1856, long after the Indian title to all these lands had become extinguished, the United States and the state of Iowa, grantor and the grantee, under the act of 1856, did not both regard and treat all lands within five miles of the Des Moines river, in the alternate sections to the extreme boundary of the state, as having been set apart for the work of internal improvement, to-wit: the improvement of the Des Moines river.

We repeat, it is not a question as to whether the legal title had passed to the state, but it is a question as to what was the intention of the congress of the United States in 1856, when they attached this proviso to the grant for railroad purposes. Now, what is the evidence in this case? The evidence

is that the data, before the committee on public lands in the house of representatives upon which this proviso in the bill of 1856 was based, expressly subtracted all the lands within five miles of the Des Moines river, on either side thereof, in the alternate sections, from the number of acres that otherwise would have passed under the grant of 1856. In every opinion of the attorney general, in every communication by the secretary of the interior, in every order of the department made with reference to the subject, the question, and the only question discussed was whether the grant extended to the northern boundary of the state. Instead of northern boundary of the state, it is now proposed to say that the subject matter of the discussion should have been the lands between the Raccoon fork and the Lizard fork of the Des Moines river, in the alternate sections within five miles of the river. But no such discussion was had; no such question was ever presented to the department; no such question was ever decided by any officer of the department; no order was ever made with reference to any such question. Therefore, we say there is no room for presumptions.

The commissioner of the general land office, February 28, 1848 (printed record, p. 90), decides the question in these words: "Hence the state is entitled to the alternate sections within five miles of the Des Moines river, throughout the whole extent of that river within the limits of Iowa." Again, June 1, 1849, Richard M. Young communicates the fact that the secretary of the treasury has decided that the grant to the state of Iowa, under the act of August 8, 1846, extended along the Des Moines river to its source, and that it did not stop at the Raccoon forks, as had been previously decided (see page 95, printed record). Exhibit "17," page 96 of the record, shows that in March, 1850, the commissioner of the general land office reported to the secretary of the interior that 824,000 acres of land had been certified, and that this amount would be increased by the unadjusted portion of the grant for

the improvement of the Des Moines river between the Raccoon forks and the source of the Des Moines river, estimated to contain about 900,000 acres.

Now this estimate embraces all the lands within the Sioux country. Appellant, in his argument, has assumed that the department made no decision or order between July 26, 1851, and prior to May 15, 1856, the date of the railroad grant that recognizes the reservation of the alternate sections within five miles of the Des Moines river above the Raccoon forks thereof.

We have already called attention to the evidence in the record that will satisfy the court that this is only an assumption. We have called the attention of the court to the fact that the department continued to certify these lands as fast as they were surveyed, as late as 1854, and that in the year 1856, the commissioner of the general land office advised the committee on public lands, and through that committee advised congress of the reservation of the very lands now in controversy, to-wit: by deducting from the proposed grant of 1856 for the Des Moines river grant, which crosses four times, 153,600 acres of land.

It has been claimed by counsel, and no doubt will be again claimed, that "if secretaries Walker, Ewing and Stewart had attempted by their decisions, dated prior to the extinguishment of the Indian title, to reserve the Indian lands for the river grant, such orders would have been void and *would not have created a reservation*. It is said the Indian treaty was paramount to their decisions, it was the law of the land, and lands covered by it could not be reserved by them for any other grant, or for any other purpose." Now this argument proves too much, for if a reservation cannot be made of lands which were not granted, or would not pass by the grant, then none of the lands above the Raccoon fork of the river were reserved. The Indian treaty was no more the law of the land than an act of congress.

The order of reservation was not necessarily based upon the right of the grantee to the land. Counsel for appellant fall into this error continually in their argument. He seems to have an incorrect notion of what constitutes a reservation. A reservation is simply an order of the department withholding the lands from public sale, or that separates them from the body of the public lands. It conveys to *no one any right, interest or equity in the land.* It did not affect the Indian title in the least for the department to make an order that their lands should not be brought into market, or exposed to public sale, or be proclaimed by the president of the United States. It is folly to talk about such an order being *void* or *illegal.* It is true that but for the act of 1862, passed long after the Indian title was extinguished, the beneficiary of the act of 1846 could never have obtained any title under the latter act, to the lands covered by an Indian title at that time, but to say that the department so thought and believed or decided with reference to these lands in controversy is to say what is not supported by a single fact in connection with the history of these grants. The fact is, that prior to the decision in the leading case of *Leavenworth, &c., R. R. Co. vs. United States*, 2 Otto, 742, the department had acted upon the theory that these grants for works of internal improvements extending through Indian lands, passed to the grantee the right to such lands *whenever the title* of the United States became perfect by the extinguishment of the Indian title and occupancy.

In that very case the department of the interior had certified to the railroad company the lands covered by the Indian reservation. The same is true with reference to the case of *U. S. vs. Leavenworth R. R. Co. et al.*, 92 U. S., 734. The cases decided by this court prior to that time, and cited for the appellant, have no direct reference to this question. The case of *The Cherokee Nation vs. Georgia*, 5 Peters, 1, presented the single question as to whether an Indian tribe or nation within the United States was or was not a foreign state, and the language

used by the court in reference to the rights of the Indians was in the nature only of argument.

The case of *Wilcox vs. Jackson*, 13 Peters, 498, related to a military reservation. Hence we find in the administration of the department with reference to this Des Moines river grant that the question of the military occupancy or reservation was raised by the department and decided upon the question of fact that no reservation had been made; but in all the discussions, all the opinions, all the appeals, all the official documents and reports, with reference to this question of the extent of the Des Moines river grant, no mention whatever is ever made of the question of an Indian occupancy. And yet if this question had been made before the department it would have been one of paramount importance, for if the grant had extended only so far as the Lizard, or only to the upper fork of the Des Moines river, and not beyond that point northward, one-half of the lands then in controversy would have been excluded from the grant. Counsel very ingeniously argue that what was done after the 12th of May, 1856, by the department with reference to the extent of this reservation could not affect its extent. But is this true? The conduct of the state and of the general government, and of the grantees of the state, with reference to these lands is a continuous history, and upon *this one point it is a consistent history.* It is a very remarkable fact that when the application was made by Steiger, the agent of the Dubuque & Pacific Railroad Company, for a certification of certain of these lands (see record, p. 135), no mention whatever is made of an Indian reservation, and no claim is made of a limitation of the orders of the department reserving the lands upon any such ground. Is it not an important fact bearing on the question of what was included in this reservation, that notwithstanding this grant was made in 1856 to the Dubuque & Pacific Railroad Company, that litigation was begun by them to contest the construction that the department had given to the act of 1846, almost immediately after their grant took effect, that

we are here, twenty years afterward, met for the first time, by the attorneys of this corporation, with a claim of an Indian reservation over these lands.

We repeat, therefore, that the question before the court is not as to whether there was a reservation under and by virtue of which the state could have acquired a title under the act of 1846, but it is a simple question as to whether or not at the time of the passage of the act of May 15, 1856, the department of the interior treated them as belonging to the grant of 1846, and, if so, they were reserved "for a work of internal improvement," within the meaning of the proviso of the act of 1856, and did not pass to the state under the latter act.

But the complete answer to this claim of an Indian reservation is in the fact that

THE LANDS IN CONTROVERSY WERE NEARLY ALL SOUTH OF THE LINE ESTABLISHED BY THE TREATY OF 1830, AND WITHIN THE CESSION TO THE UNITED STATES.

The southern boundary of the reservation, so-called, or rather the northern boundary of the country ceded, is clearly defined in the treaty by natural monuments, and can be traced by the eye upon any correct map of the state. (See record, p. 74).

The northern boundary of the ceded territory is thus described in the first article of the treaty:

> Beginning at the upper fork of the Des Moines river and passing the sources of the Little Sioux and Floyd rivers, to the fork of the first creek which falls into the Bix Sioux or Calumet river, on the east side; thence down the said creek or Calumet river to the Missouri river; thence down said river, etc.

Now, the only way plaintiffs can make out a case is to claim that it was not the upper fork of the Des Moines that was meant in this treaty, but that the starting-point must be forty miles below the upper fork.

And why this perversion of the law and this libel upon nature and the true geography of the state?

The only reason given for it is that the surveyor general at Dubuque, who probably never went out of his office to ascertain the fact, or some draughtsman in his office, in making maps of the official surveys from 1849 to 1851, made a mistake as to the location of the upper fork of the Des Moines, and placed the upper fork forty miles north of where it ought to be, and in order to make his mistakes still more apparent on the face of his maps, started the line of the Indian boundary west of the Des Moines, at the Lizard river, twenty miles south of the upper fork of the Des Moines river.

That we do not do injustice to the argument (?) of plaintiff in this respect, we quote what he relies upon as evidence of the boundaries of this Indian treaty:

> The south boundary line of the reservation so occupied by the Sioux up to 1853, is shown by the official maps for 1849, 1850, 1851, 1852 and 1853, returned by the commissioner of the general land office and the surveyor general of Iowa, with their reports for those years. Lithographic copies of these maps are annexed to the abstract.
>
> As to the extent and boundary of this reservation, these maps from the archives of the government are of the most positive and conclusive character. They are contemporaneous with the event; they were made by officers of the government in the discharge of their duties, for the express purpose of showing the public lands in Iowa at that time.

The only evidence in addition to these confessedly erroneous maps is the fact that the Sioux Indians drove off the U. S. surveyors, when making their surveys in 1849, upon ground confessedly belonging to the United States, and stole the camp equipage of the surveying party. (Record, p. 62.)

These same Sioux murdered our citizens in 1862 at Spirit Lake, and if the lines of their treaties are to be established by the "*locus in quo*" of their thefts and murders then the rule of property will be indeed treacherous.

Is there any doubt, can there be any doubt about the location of the *upper fork* of the Des Moines—or the head waters of the Floyd or Little Sioux rivers?

It is conceded that this country was surveyed in 1854, and the upper fork of the Des Moines river was ascertained officially and certainly. A copy of the original U. S. government surveys of townships 91, 28 and 91, 29 was introduced on the trial by defendant: (See plate Nos. 11 and 12 of book of maps.)

These surveys show beyond controversy that the upper fork of the Des Moines river, formed by the junction of the east branch with the main stream, is located in section 19, township 91, range 28, west, and that a line starting from that point and passing to the sources of the Little Sioux and Floyd rivers to the fork of the first creek which fall into the Big Sioux or Calumet river on the east side, necessarily leaves all the lands in township 90, 91 and 92, ranges 29, 30 and 31, south of the northern boundary defined by article 1st of the treaty of July 15, 1830.

It was claimed that the maps for 1849, 1850, 1851, 1852 and 1853, returned to the general land office by the surveyor general, were evidence of the "most conclusive and positive character" of the boundary of this Indian treaty, and that they are to overrule the official surveys that establish the fact of the location of this natural monument. And yet it is claimed and contended in plaintiffs' argument that when these maps were made, the east fork of the Des Moines river was supposed to be the main stream, and that the upper fork was not known. This was an assumption of counsel's argument when he was arguiug the question of reservation on the east fork. Then he confessed that the surveyor general made these maps, or the draughtsman made them in absolute ignorance of the topography of the country beyond the lines of the official surveys. It is not claimed that these maps were made by any one who surveyed the line described in the treaties of 1825 or of 1830, or who was authorized to survey or ascertain that line. Probably the most absurd assumption in plaintiffs' argument is, that these maps made in the years 1849 to 1853 were

"contemporaneous with the Indian treaty of 1830." This is a stretch of the imagination of twenty years' length. We trust the credulity of the court will scarcely stretch so long.

Again it is asserted that these maps were made by officers of the government for the express purpose of showing the public lands in Iowa at that time. But this is not true. These maps were made for no other purpose than to show the extent and progress of the public surveys.

After the district court had announced its decision in this case, but before the appeal was taken and on the 26th of February, 1879, the defendant filed a motion for a new trial, supported by certain affidavits and exhibits found upon pages 160 to 174.

This cause was originally brought in the district court of Humboldt county. The district court rendered a decree in favor of plaintiff. The methods of trial in chancery causes in the state courts are regulated by statute. Under the state statute a retrial of a cause involving the title to real estate is a matter of right and is secured by a motion for a new trial. The decision of the district court was made in vacation and at the next term application was made for a rehearing and a showing made as to surprise and newly discovered evidence. This motion was overruled but the evidence made a part of the record and went to the Supreme Court on the appeal.

The state statute under which this motion was made, is as follows:

The provisions of the Code of Iowa applicable to new trials are as follows:

SECTION 2837. A new trial is a re-examination in the same court of an issue of fact, or some part or portions thereof, after verdict by a jury, report of a referee, or a decision by the court. The former report, verdict or decision, or some part or portion thereof, shall be vacated and a new trial granted on the application of the party aggrieved for the following causes affecting materially the substantial rights of such party.

SUB. 7. Newly discovered evidence material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial.

SEC. 3268. In any of the cases provided for by this chapter the court, in its discretion, may grant a new trial on the application of any party thereto, or those claiming under a party, made at any time within one year after the former trial, although the grounds required for a new trial in other cases are not shown; but only one such new trial shall be granted.

SEC. 3273. An action to determine and quiet the title of real property may be brought by any one having or claiming an interest therein, whether in or out of possession of the same, against any person claiming title thereto, though not in possession.

The Supreme Court of Iowa in the hearing of the appeal held it was not necessary to determine the question of a rehearing, for the reason that upon the evidence as first submitted to the district court of the state the decree of the district court must be reversed.

It is now claimed that the evidence offered to sustain the motion for a new trial ought not to be considered by this court.

This evidence consists of the minutes of the official survey of the boundary line, established by the treaty of 1825 between the Sacs and Foxes and Sioux tribes of Indians, and a map showing conclusively the upper fork of the Des Moines established by that survey.

The certificate to the map and field notes is as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, Washington, D. C., Jan. 6, 1879.

I, J. M. Armstrong, acting commissioner of the general land office, do hereby certify that the aunexed diagram is a true copy of the original on file in this office; and that the annexed field notes are a true, correct and complete copy of the field notes of the government survey of the boundary line between the Sacs and Foxes and Sioux Indians, as established by an official survey under the treaty of August 19, 1825 (Statutes at Large, Vol. vii, p. 272), as the said field notes appear of record in this office, as filed therein in pursuance of law and the usage of this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL] J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

(See record, p. 142.)

To the field notes appears the following original certificate of the surveyor:

I certify that the foregoing notes, on pages one to twenty-seven, inclusive (one to fifty-eight this copy), are the original field notes of the survey of the Indian boundary line, as executed under the second article of a treaty made with the Sacs, Foxes and Sioux Indians, on the 19th August, 1825, and 15th July, 1830; and that the lines, courses and distances were all taken with my compass set at a variation of nine degrees east.

INDIAN OFFICE, August 7, 1832.

NATHAN BOONE,
Deputy Surveyor.

We do not think it at all material to consider the question as to whether this evidence was or not before the Supreme Court. This court will take judicial notice of Indian treaties and of geographical monuments named therein.

The upper fork of the Des Moines river is a monument fixed by nature, and the court will take judicial notice of it, as it will of the existence of the Mississippi. So a map of the official survey this court will consider, no matter whether introduced in evidence or not for the purpose of being advised as to these natural monuments and geographic facts.

This court will not insist on being ignorant of the geography of the country or permit itself to adjudicate against nature, when the means of ascertaining the truth are within its reach.

This map 13 has also been omitted in printing the record, but is one of the book of maps that by stipulation is made a part of the record in this case.

By reference to the other plats, Nos. 11 and 12, which were in evidence on the original trial, the upper fork of the Des Moines is officially established.

We have an official survey, by the government, of the line established between the Mississippi and Des Moines rivers, by the treaty of 1825, and the terminal point of that treaty at the upper fork of the Des Moines river. The upper fork of the Des Moines river was then ascertained officially to be just

where it is now, where it always has been, and where we presume it will continue to remain. This was indeed contemporaneous with the making of these treaties. The survey was commenced in 1832, only two years after the treaty of 1830. The boundary of the treaty of 1825, west of the Des Moines river, was not permanently established, but the upper fork of the Des Moines river was just as certain and definitely ascertained and established, by a survey to that point, as though there had been a survey of the entire line. The treaty of 1830 starts with the upper fork of the Des Moines river. It is said that the line west of the Des Moines river, under the treaty of 1830, was not officially surveyed. An all-sufficient answer to this is in the fact that the only important point in controversy is the starting point of that line, to-wit: The upper fork of the Des Moines. After you have the starting point there is no trouble about the course the line shall run, to-wit: The head waters of the Floyd and Little Sioux rivers. To illustrate this, you take the two maps, the one introduced by plaintiff, No. 3, and map No. 13. The course of the line to the head waters of the Little Sioux or Floyd, thence to the Calumet river, and down that river to the Missouri, is the same upon both maps. The difference is alone in the starting point of the line, to-wit: The line on map No. 13 starts at the upper fork of the Des Moines, whereas the line on map No. 3 starts at the mouth of the Lizard, and it is the lands between these two lines that are in dispute in this case, with the exception of a very few parts of sections located in the north part of 29, 91, and the central portion of 30, 92, lying along the Des Moines river, west of that stream and east of the boundary as defined and laid down on map No. 13. If it should ever become necessary to ascertain the particular portion of these lands lying between those two lines for the purposes of this case it may become necessary for this court to remand this cause and to have a new survey made to ascertain definitely what sections or parts of sections are between the two lines. And that is all

that there is in controversy based upon this claim *of an Indian reservation.*

Now, what were these maps that Mr. Booth made out and reported to the department, and that have been produced by the appellants? They purport, upon their face, simply to be a sketch of the public surveys, showing how far the public surveys had progressed at that date. They are made for no other purpose and for no other object, and do not purport to be correct in any other particular.

The references disclose that their purpose was only to show how far the township lines had been run, what lands were in process of survey, and what sections had been platted, and of which descriptive lists had been made and field notes recorded and transcribed. Every township surveyed on the map was marked with reference to these particulars by some letter. Mr. Booth, as surveyor general, had no occasion to ascertain the boundary of the Sioux lands, or the location of streams beyond the progress of his surveys. If, as a public officer, it had been his duty to ascertain this boundary, and if, as a public officer, he undertook to make a plat or survey of it, in pursuance of some official duty imposed upon him, then the line described upon these maps might be of some weight or authority. But he had no such purpose in view in making any of these maps. The line describing the southern boundary of the Sioux country was not made from any data whatever in his possession.

Now, the only difference in the correct map produced by us and the maps attached to the report of Mr. Booth is in defining the southern boundary of the Sioux. His map purports to give the boundary defined by the treaty of 1830. The entire difference in the maps is based upon his error as to the upper fork of the Des Moines river. He commences at the Mississippi, twenty miles north of the mouth of the upper Iowa river (taking the north line of the twenty-mile strip), but instead of striking the Des Moines river twenty miles north of the upper fork of that river, he makes his line strike the Des

Moines river twenty miles north of the Lizard. He then drops down to the Lizard as the upper fork, where the line of the treaty of 1825 is made to cross, and the lines of the treaty of 1830 is to begin, and he describes a line thence to the source of the little Sioux and Floyd rivers. His map is evidently based on the language of the treaty of 1830, and his mistake is as to what constituted the upper fork of the Des Moines river. This was the data, and the only data, he had for the reason that he never attempted to obtain any other. The official survey was on file in the proper department at Washington. The natural and artificial monuments described in that survey were on the ground, unmistakable and easily ascertained, and if it had been any part of his official duty to ascertain it, undoubtedly he would have done so.

It is objected upon the part of plaintiff that this map, No. 13, was made by the department at Washington, since this controversy arose, and that it is not competent evidence. In answer to this, we say that the data from which this map was made was in existence long before this controversy was thought of. The only question is, does this map show *truly* the official survey on file in the department? We have the certificate of a competent officer of the government that it does. It is made by the department for the purpose of ascertaining and illustrating this very boundary. It is precisely of the nature of many of the maps and plats introduced in evidence by plaintiff in this case. For instance, all these maps introduced by plaintiff showing the lines of railroads, and the lines of the Des Moines river grant, are nothing more than the work of a clerk of the department, taking the list of lands and a skeleton map, and painting the sections blue, red or green, as the case may be, according to the list. It is merely a presentation to the eye in a convenient form of what exists as a matter of description on file in the department.

Nothing is more common on the trial of causes than to have a witness familiar with the *locus in quo* of *any* transaction make

a diagram or plat of it, even after subpœna is served. And nothing is more usual than to summon a professional surveyor and have him take the minutes of a survey, and to run the boundaries on a map or plat. This is indeed the only method by which the court can ascertain the true lines of a survey. The objection is not only purely technical, but is wholly unfounded and unreasonable.

We feel that some apology is due to the court for the length of this argument.

We think we have successfully maintained the following propositions:

1. That the state of Iowa claimed, under the act of 1846, the alternate sections of land on either side of the Des Moines river above the Raccoon fork to the north line of the state, and to that extent the claim was recognized by the executive department of the government.

2. That the officers in charge of the public lands reserved the same from public sale to the full extent of the claim thus made.

3. That those officers of the government who were of the opinion that the grant did not extend above the Raccoon fork still acquiesced in and perpetuated these orders of reservation to the north line of the state.

4. That this reservation was reported to congress at the passage of the act of 1856, and the proviso in the bill covered and was intended to cover this very reservation which was long after the Indian title had been extinguished.

5. That the certification of lands on the east fork of the Des Moines river was an error for which the Des Moines Navigation Company was alone responsible, and that said error was corrected in the Harvey adjustment, and the amount of lands so certified on the east fork were deducted out of defendant's grant.

6. That there never was any reservation of lands on the east fork of the Des Moines river, or any order of reservation that related to such lands, and that the state never claimed any such reservation, neither did the department at Washington insist upon any such.

7. That the opinion of Attorney General Cushing contains the first official mention of lands on the east fork of the Des Moines river, and that his proposition to the state was to receive lands *along the course of the stream to the north line of the state*, and to relinquish lands on the course of the stream above the north line of the state, and that this proposition Mr. Mason declined.

8. That in the subsequent adjustment of the grant under the act of 1862 the main stream was recognized both by the state and the general government as the stream upon which the original reservation had been made, and upon which the grant was rightfully located.

9. We have further shown that plaintiff must recover upon the strength of his own title.

10. That the state of Iowa declared that the plaintiff had forfeited all lands except those selected and earned prior to 1866.

11. That the only evidence in the record of the completion of any railroad in Iowa by the plaintiff, in accordance with the terms of the grant of 1856, is the certificate of Gov. Stone, issued in 1865, showing a completion of their road as far west as the east bank of the Cedar river.

12. That under the rule laid down by the Supreme Court of Iowa in the cases cited, plaintiffs were not entitled to select the lands in controversy, and have no title thereto because they were not coterminus with the road certified to be built.

13. That the lands in controversy are not within the six-mile limits of plaintiffs' road, and that no lands were sold or disposed of by the general government within the limits of plaintiffs' grant between the 15th of May, 1856, and the date of location of their road, August 5, 1856, or July 7, 1856, as shown upon map No. 4.

14. That under the rule established by this court in the case in 2d Otto, plaintiffs were entitled to select no lands as indemnity lands outside of their six-mile limits, except for lands disposed of by the United States between the date of their grant and the location of their road.

15. That the question of the Indian reservation over the lands in controversy prior to 1862 becomes wholly immaterial, because both this court and the Supreme Court of Iowa have held that an order of reservation may be good without any valid grant to support it.

16. And lastly, we have shown that the lands in controversy are south and west of the north boundary of the lands ceded by the Indian tribes to the United States by the first section of the treaty of 1830, and were subject to grant in 1846.

All good men, anxious for the prosperity of the state, and uninfluenced by any selfish or personal considerations, must regret if any question yet remains unsettled in regard to the title to the "Des Moines river lands." The numerous adjudications of this court, followed by the Supreme Court of Iowa, defining and enforcing the wise proviso in the railroad grant of 1856, excepting therefrom all lands theretofore reserved by any "competent authority for any work of internal improvement," ought long since to have given peace to our state and security to titles derived under the acts of 1846 and 1862. Very many homes have been built and many thousands of dollars invested on the faith and security of these titles. We cannot think any

such public calamity awaits our state and people as a decision that shall disturb this title.

In that confidence we respectfully submit the case.

C. C. Nourse & S. Kauffman

NOURSE & KAUFFMAN,

Solicitors for Defendants, the Des Moines Valley Railroad Co.

OFFICE SUPREME COURT U.S.
FILED
OCT 29 1883
JAMES H. McKENNEY, Clerk.

United States Supreme Court.

October Term, 1883.

THE DUBUQUE AND SIOUX CITY R.R. CO. AND THE IOWA HOMESTEAD CO.

vs.

THE DES MOINES VALLEY R.R. CO.

No. 71.

ERROR TO SUPREME COURT OF IOWA.

Additional brief for Defendant.

This case is brought here by a writ of error to the Supreme Court of Iowa, and the first thing to be determined is what questions are here for review. The case is not for a trial *de novo* as upon appeal from the Circuit Court, as was the Dumont case, upon which the Court was divided in opinion, and we presume that the main question that then divided the Court is not now properly before it.

In the case of Murdock *vs.* The City of Memphis, (20 Wall., 636,) this Court lays down the following conclusions as to its powers under the act of February 5, 1867 :

1. That it is essential to the jurisdiction of this Court over the judgment of a State Court that it shall appear that one of the questions mentioned in the act must have been raised and presented to the State Court.

2. That it must have been decided by the State Court, or

such public calamity awaits our state and people as a decision that shall disturb this title.

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1. That it is essential to the jurisdiction of this Court over the judgment of a State Court that it shall appear that one of the questions mentioned in the act must have been raised and presented to the State Court.

2. That it must have been decided by the State Court, or

that its decision was necessary to the judgment or decree rendered in the case.

3. That the decision must have been against the right claimed or asserted by plaintiff in error under the Constitution, treaties, laws, or authority of the United States.

4. These things appearing, this Court has jurisdiction, and must examine the judgment so far as to enable it to decide whether this claim of right was correctly adjudicated by the State Court.

5. If it finds it was rightly decided, the judgment must be affirmed.

6. If it was erroneously decided against plaintiff in error, then this Court must further inquire whether there is any other matter or issue adjudged by the State Court which is sufficiently broad to maintain the judgment of that Court, notwithstanding the error in deciding the issue raised by the Federal question. If this is found to be the case, the judgment must be affirmed without inquiring into the soundness of the decision on such other matters or issue.

7. But if it be found that the issue raised by the question of Federal law is of such controlling character that its correct decision is necessary to any final judgment in the case, or that there has been no decision by the State Court of any other matter or issue which is sufficient to maintain the judgment of that Court without regard to the Federal question, then this Court will reverse the judgment of the State Court, and will either render such judgment here as the State Court should have rendered or remand the case to that Court, as the circumstances of the case may require.

When this case was called we had an intimation from counsel, for the first time, that it was proposed to discuss the Harvey settlement or adjustment and the construction of the act of Congress of March 3d, 1871, confirming to the State the title to the so called indemnity lands as settled

by this Court in the Iowa Homestead case, (17 Wallace, 165.) Under the rule laid down by this Court in the case of The City of Memphis, *supra*, no such question can be considered by the Court in this case.

1. No such questions are made in the pleadings.

2. No such questions were passed upon by the Supreme Court of the State in its opinion.

3. No such questions are mentioned in the certificate or judgment of the Court.

4. No such question was presented to the State Court.

5. The Harvey adjustment, and as to who consented to it, and what vested rights may or may not be affected by it, are questions of fact, not dependent for their determination upon the construction of any act of Congress or treaty.

2.

The Supreme Court did not determine all the issues, either of fact or law, argued in the case, for the sufficient reason that their determination was not necessary to a disposition of the case.

One of the important isssues in this case was joined upon the allegation of plaintiff's petition that the lands claimed by plaintiff were earned by building the second section of twenty miles of the said road."

Record, p. 2.

This is expressly denied in the answer, page 4, paragraph 5.

It was argued before the State court that plaintiff must recover on the strength of its own title; or, in other words, the plaintiff had no standing in court to raise the question of the construction of this act of Congress without first showing a title or right under the act of 1856.

The grant of 1856 is to the State of Iowa, not to the

plaintiffs, and the act of the general assembly of the State makes the performance of certain acts upon the part of the railroad company conditions precedent to any vested right of the company to any of the land.

Under this act two questions were raised by defendant.

1st. That the act of 1856 gave no right to select lands outside of the 6-mile limits and within the 15-mile limits of their grant, except in lieu of lands disposed of by the United States between the date of the act and the location of the road.

2d. That the lands selected on account of the construction of the second section or any section of the road subsequent to the first must be co-terminous with the completed part of the road.

These two questions are discussed and authorities cited to sustain those positions on pages 39 to 51, inclusive, of our original brief.

We call attention to them here for the purpose of raising this question. As the State Court did not find it necessary to pass upon them for the reason that it found upon other considerations, that plaintiff was not entitled to the relief prayed for, will this Court consider them for the purpose of ascertaining whether or not plaintiffs have a right to the determination of the other questions, or will it decide these other questions without reference to them, and in case the Court should conclude these other questions ~~more~~ were erroneously decided, will this Court then remand the case to the Supreme Court for a further consideration and disposition of these other issues?

It is evident no final decree in favor of plaintiff could be reached in this Court without a determination of these questions.

The State Court discusses and decides only three questions involving the rights of plaintiff under the act of 1856, as follows:

1st. The claim of plaintiff that the reservation of lands above the Raccoon Forks of the Des Moines river by the Department of the Interior only extended to lands certified to the State prior to the railroad grant of 1856.

2d. The claim that because certain lands were erroneously certified to the State under the river grant, which were located on the east fork of the Des Moines river, that, therefore, the reservation must also be taken to have been intended to be equally erroneous.

3d. The claim that the lands were not subject to grant in 1846 because of an Indian reservation, and that, therefore, a reservation of them from sale or grant was in derogation of the Indian title and was void.

We desire to cite and comment upon the following additional authorities upon the last point relating to the effect of the supposed Indian title upon this reservation by the Department.

The case of Leavenworth, &c., *vs.* R.R. Co., (2 Otto, 740,) decides that Congress may, by express enactment, *reserve* from grant lands within an Indian reservation. If this may be done by Congress why not by orders of the President or the Department.

The case of Beecher *vs.* Wetherby, (5 Otto, 522,) decides that Congress has the power, by express grant, to dispose of lands to which the Indian title or right of occupancy has not been extinguished by treaty, citing—

Johnson *vs.* McIntosh, 8 Wheaton, 543.

U. S. *vs.* Cook, 19 Wallace, 591.

And that the propriety and justice of such action on the part of the Government toward the Indians, with respect to their lands, is a question of governmental policy, and is not a matter of discussion in a controversy between third parties, neither of whom derive title from the Indians.

This case differs from that of Leavenworth R.R. Co., *supra*, in this that in that case the "right of the Indians" to use and occupy the land without interference by the United States was secured to the Osage Indians by express treaty provisions. In this case it is only claimed that their right of occupancy, originating in the fact that they were accustomed to roam over the country, had not been ceded or extinguished by treaty stipulations until 1853.

In the case of Wilcox *vs.* Jackson, (13 Peters, 512,) it is recited that by express authority of Congress lands may be occupied and reserved for governmental purposes within the Indian country.

C. C. NOURSE,
Solicitor for Defendants.